

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 621(a)(1) of the Cable	)	MB Docket No. 05-311
Communications Policy Act of 1984 as Amended)	
by the Cable Television Consumer Protection and)	
Competition Act of 1992)	

REPLY COMMENTS OF THE VERMONT PUBLIC UTILITY COMMISSION

The Vermont Public Utility Commission (“VPUC”), which is the cable franchising authority for the State of Vermont,¹ opposes the proposals and tentative conclusions set forth in the FCC’s September 25, 2018 *Second Further Notice of Proposed Rulemaking*.² The VPUC files these reply comments also to respond to allegations made in the comments of NCTA – The Internet & Television Association (“NCTA”) concerning aspects of orders issued by the VPUC in a recent cable franchise renewal proceeding involving NCTA’s member Comcast.³ The VPUC’s orders were duly issued in a fully adjudicated contested-case proceeding that is now pending review before the U.S. District Court for the District of Vermont under Sections 626 and 635 of the Cable Act, 47 U.S.C. §§ 546 (e)(1) and 555 (a)(1).⁴ The issues raised in NCTA’s comments are pending before the federal district court, and it is contrary to the procedures of the Cable Act for NCTA, on behalf of its member Comcast, to use the *Second FNPRM* proceeding

¹ 30 V.S.A. § 502(b).

² *In re Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Second Further Notice of Proposed Rulemaking, FCC 18-131 (2018) (“*Second FNPRM*”).

³ Comments of NCTA (Nov. 14, 2018) (“NCTA Comments”).

⁴ *Comcast of Conn./Ga./Mass./N.H./N.Y./N.C./Va./Vt., LLC v. Vt. Pub. Serv. Comm’n* (D.Vt. filed Aug. 28, 2017), Civ. Docket No. 17-CV-161.

as an end-run around the ordinary review provisions of the Cable Act. Moreover, NCTA both mischaracterizes and ignores significant portions of the record of the VPUC renewal proceeding.

I. THE CABLE ACT INCLUDES PROVISIONS TO ENSURE THAT FRANCHISE RENEWAL CONDITIONS ARE REASONABLE.

NCTA, in support of its argument to extend certain “‘findings and regulations’ adopted in its Section 621 orders to state franchising,” calls specific attention to a VPUC Order of January 13, 2017 (the “Renewal Order”)⁵ to support its argument.⁶ The fact that Comcast has challenged certain conditions in the VPUC’s Renewal Order in federal district court under the Cable Act demonstrates that Congress has already established a mechanism by which cable operators can seek relief from what they believe to be unreasonable franchise conditions. While many of the allegations in NCTA’s comments about the VPUC’s Renewal Order are inaccurate, as discussed in greater detail below, it is for the federal district court, not the FCC, to determine whether the VPUC’s actions are consistent with the Cable Act. Comcast had the opportunity to argue in the franchise renewal proceeding that the “millions of dollars of PEG, I-Net, and other costs”⁷ are excessive, and it can now make that argument, based on the record of the renewal proceeding, in federal district court. The Commission should reject NCTA’s attempt to circumvent the Cable Act’s provisions for judicial review of this franchise renewal decision in this proceeding.

Moreover, the FCC’s tentative conclusions in the *Second FNPRM* regarding franchise fees, and NCTA’s suggestion about how those conclusions would apply to the VPUC’s Renewal Order, are wrong because they would render superfluous the process established in the Cable Act (which the VPUC follows) for administrative hearings subject to judicial review. As

⁵ Attachment 1 (*In Re: Renewal of the Certificate of Public Good of Comcast to provide cable television service*, Docket No. 8301 (Vt. Pub. Serv. Bd. Jan. 13, 2017)).

⁶ NCTA Comments at 59-60.

⁷ NCTA Comments at 62.

provided for under the Cable Act, much of the VPUC’s renewal proceeding focused on the issue of whether Comcast’s renewal proposal was “reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.”⁸ The Cable Act also provides that a cable operator can obtain appropriate relief from a court if it “demonstrate[s] that the adverse finding of the franchising authority” with respect to this, or one of the other three statutory factors, “on which the [franchise renewal] denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted” by the franchising authority.⁹ Congress would not have provided for this process for considering communities’ future cable-related needs and interests in light of their costs, or judicial review based on the evidence gathered in these proceedings, if, as NCTA argues, virtually all cable-related franchise requirements were to be subject to the five percent franchise fee cap.

Thus, the current dispute between the VPUC and Comcast illustrates both the process Congress established for franchising authorities to assess the reasonableness of franchise renewal requirements and the process by which cable operators can seek relief if they believe these decisions are in error. There is no need for the FCC to reinterpret the Cable Act’s franchise fee provision to prevent what NCTA characterizes as unreasonable cable-related in-kind franchise requirements, and doing so would be contrary to other provisions of the Cable Act.

II. NCTA COMMENTS MISSTATE OR IGNORE KEY ASPECTS OF THE VPUC PROCEEDING

In its comments, NCTA states that the VPUC “ordered a cable company to cover millions of dollars of PEG, I-Net and other costs on top of assessing the maximum five percent franchise

⁸ 47 U.S.C. § 546(c)(1)(D).

⁹ 47 U.S.C. § 546(e)(2)(B).

fees.”¹⁰ NCTA cites four requirements from the Renewal Order to support its claim that the Renewal Order imposes “millions of dollars” of costs.¹¹ In reality, Comcast could incur significant unreimbursed costs from only one of these items – the longstanding requirement that the cable company allow PEG program schedules to be listed on its electronic programming guide.

NCTA neglects to mention two important points about the requirement that the cable company allow the listing of PEG program schedules of its electronic programming guide, as well as the other requirements cited by NCTA on pages 62 and 63 of its comments as alleged examples of state franchising authority overreach. First, those requirements are longstanding conditions that were in place more than a decade before the most recent renewal of Comcast’s franchising license. Second, and more importantly, these requirements *were proposed by the cable company itself in 2005* in connection with Comcast’s acquisition of Vermont affiliates of Adelphia Communications Corporation (“Adelphia”).¹²

The VPUC concluded in the 2017 Renewal Order, based on the evidence presented by the parties to the case, that Comcast was not in compliance with the existing PEG program schedule listing requirement that it had itself *proposed* in 2005 in connection with its acquisition of Adelphia. The VPUC concluded that this requirement was important to meet future cable-

¹⁰ NCTA Comments at 62.

¹¹ NCTA Comments at 62-63.

¹² Attachment 4 (*Joint Petition of Comcast of Georgia, Inc. et al., for authority, inter alia, to acquire control of all Vermont affiliates of Adelphia and for a certificate of public good to own and operate their cable television systems* at 5, 21, (finding 98), 25 (finding 119), 26 (finding 125), Docket No. 7077 (Vt. Pub. Serv. Bd. Dec. 29, 2005)). For example:

Under the terms of Holdco's proposed CPG, Holdco must provide fiber-optic or coaxial cable drops, capable of two-way service and remote origination service, upon request, at every school, library, and PEG-access studio, and to at least one municipal building in a municipality in which Holdco is obligated to provide cable service. Exh. TWC/Comcast 2 (¶ 20).

Id. P 125.

related community needs and interests, noting that it viewed this as “the most important [PEG channel outreach] requirement in terms of community needs and interests.”¹³ The VPUC’s conclusions were in part based on the following findings:¹⁴

105. For several years, Comcast’s customers have not been able to view program schedules on an on-screen programming guide for any of 45 PEG channels carried by Comcast. Schedule information for programs on non-PEG channels is available on Comcast’s programming guide. In the case of PEG channels, Comcast’s programming guide indicates the type of programming that is on each PEG channel (public, governmental, or educational), but does not provide any program-specific information. . . .

106. After the Existing [license] was issued in 2005, Comcast ensured that programming information for PEG and other channels was provided on the TV Guide Channel for a number of years. . . .

107. As part of Comcast’s digital network enhancement project commenced in 2010, Comcast’s interactive programming guide replaced the TV Guide channel as the means by which information is presented to subscribers about upcoming programming. . . .

110. The unavailability of program schedules for PEG channels on an electronic programming guide is the result of Comcast’s system design choices related to programming guides. Since Comcast began its digital network enhancement project, Vermont AMOs have sought access to the IPG in contract negotiations without success. Comcast representatives have stated that this issue cannot be solved in contract negotiations and would have to be resolved at the state level. . . .

114. The [Vermont Department of Public Service’s Community Needs Assessment] indicated that “there was widespread support among virtually all respondents for placing PEG listings on the IPG.”

¹³ Renewal Order at 55.

¹⁴ *Id.* at 50-52.

The VPUC included the challenged program listing condition in the renewal certificate of public good “to bring Comcast into compliance with its obligations under its [[2005 license], and to ensure that Comcast would be able to meet future cable-related community needs and interests in providing PEG channel program schedules to Comcast customers during the term of the Renewal [license].”¹⁵ As noted above, Comcast has brought an action in federal district court contesting this and certain other requirements of the Renewal Order.

With respect to the I-NET requirement (which was also in the cable company’s original 2005 franchise proposal), NCTA states (at 62) that this requirement creates “an obligation on the cable operator to bid for – and potentially construct – I-Nets proposed by any government agency, educational institution, or an educational or governmental access entity, while limiting the operator’s proposed charges for such I-Nets.” The Renewal Order issued by the VPUC, however, provides for the recovery by Comcast of its costs in constructing an I-Net (just as NCTA contemplates for I-Net Construction in its table on page 53 of its comments) and further allows Comcast an 11.25% rate of return on its I-Net investment: “Charges for institutional networks shall not exceed Comcast’s, or its duly authorized agent’s fully-allocated costs, including a rate of return of 11.25%, to provide the network.”¹⁶

With respect to the two other requirements cited by NCTA in its comments, the VPUC refers the FCC to the findings and discussions regarding live program origination at local sites on

¹⁵ Attachment 3 (*In Re: Renewal of the Certificate of Public Good of Comcast to provide cable television service*, Order Denying Motion to Alter or Amend Judgment Pursuant to V.R.C.P. Rule 59(e) at 4, Docket No. 8301 (Vt. Pub. Util. Comm’n July 27, 2017) (“July 27, 2017, Order”).

¹⁶ Attachment 2 (*In Re: Renewal of the Certificate of Public Good of Comcast to provide cable television service*, Renewed and Consolidated Certificate of Public Good Issued Pursuant to 30 V.S.A. §§ 231, 503, 504, and 506 at 14 (condition 52), Docket No. 8301 (Vt. Pub. Serv. Bd. Jan. 13, 2017)). See also Attachment 5 (*Joint Petition of Comcast of Georgia, Inc. et al., for authority, inter alia, to acquire control of all Vermont affiliates of Adelphia and for a certificate of public good to own and operate their cable television systems*, Certificate of Public Good Issued to Cable Holdco Exchange III LLC Pursuant to 30 V.S.A. §§ 503 and 504 at 23 (condition 62), Docket No. 7077 (Vt. Pub. Serv. Bd. Dec. 29, 2005)).

pages 41 to 49 of the VPUC's January 1, 2017 Renewal Order and pages 20 to 22 of the VPUC's July 27, 2017, Order and to the findings and discussion of the internet service requirement on pages 91 to 94 of the Renewal Order.¹⁷

NCTA also contends later in its comments that the Renewal Order “provides a clear example” of using build-out requirements as a “subterfuge for franchising authorities to mandate new facilities for broadband and other non-cable services.”¹⁸ The VPUC's findings and discussion regarding the need to build out cable service to unserved areas of the State (Renewal Order at pages 81 to 89 and July 27, 2017, Order at pages 15 to 20) speak for themselves. And the lawfulness of the Renewal Order's cable-related requirements is pending before the U.S. District Court for the District of Vermont, not the FCC.

Finally, NCTA wrongly implies that the Renewal Order also assessed the maximum five percent franchise fees. The Renewal Order did not mandate a five percent franchise fee. Under Vermont law, cable companies and public access organizations negotiate multi-year contracts, which include budgets for annual operating expenses to support PEG access. The funding level for public access organizations' annual operating expenses in these contracts is expressly subject to the five percent franchise fee cap provided in 47 U.S.C. § 542(b). In these contracts (which are not subject to VPUC approval), Comcast itself agreed to provide PEG annual operating support equal to the five percent franchise fee cap.

¹⁷ Renewal Order; Order of July 27, 2017.

¹⁸ NCTA Comments at 64.

III. CONCLUSION

The FCC should reject NCTA's arguments regarding the *Second FNPRM*'s tentative conclusions and also reject NCTA's mischaracterizations of the VPUC's franchise renewal decision for Comcast. The Cable Act specifies that courts, not the Commission, are to hear challenges to franchise renewal decisions. The FCC should respect the Cable Act and allow review of the VPUC's Renewal Order to play out in court as Congress intended when it enacted the Cable Act.

Respectfully submitted,

/s/ James N. Horwood

James N. Horwood
Tillman L. Lay
Jeffrey M. Bayne
SPIEGEL & MCDIARMID, LLP
1875 Eye Street, NW
Suite 700
Washington, DC 20006
(202) 879-4000

*Counsel for Vermont Public
Utility Commission*

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ATTACHMENT 1

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8301

In Re: Renewal of the Certificate of Public Good of)	
Comcast of Connecticut/Georgia/ Massachusetts/New	)	Hearings at
Hampshire/New York/ North Carolina/Virginia/	)	Montpelier, Vermont
Vermont, LLC, d/b/a Comcast, expiring on	)	July 18, 2016
December 29, 2016, to provide cable television service)	

Order entered: 1/13/2017

PRESENT: James Volz, Chair
Margaret Cheney, Board Member¹
Sarah Hofmann, Board Member

APPEARANCES:

Nancy Malmquist, Esq.
Downs Rachlin Martin, PLLC
and
Daniel Richardson, Esq.
Tarrant, Gillies & Richardson
for Comcast

Daniel Burke, Esq.
for the Vermont Department of Public Service

Douglas R. Marden, Esq.
Law Offices of Douglas R. Marden, PLLC
for Vermont Access Network

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I. INTRODUCTION

In this Order, the Vermont Public Service Board (“Board” or “PSB”) determines to renew, subject to conditions, the certificate of public good (“CPG”) of Comcast of Connecticut/ Georgia/ Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, d/b/a Comcast (“Comcast” or the “Company”). Under state law, no company may own or operate a cable television system in Vermont unless it holds certificate of public of good issued by the Board. In general, cable operators are required to apply to the Board for a renewal of their CPGs once every 11 years, and this proceeding involves the renewal application of Comcast for a new CPG that will be in effect through 2027.

Comcast is by far the largest and most significant provider of cable television services in Vermont. It provides cable television services to roughly 80% of the Vermont residents who receive broadcast television channels through a cable system, and its service area includes 197 of Vermont's 255 municipalities (although Comcast's cable system does not extend to many of these municipalities). Since Comcast's acquisition of the cable systems of affiliates of Adelphia Communications Corporation ("Adelphia"), the number of subscribers for Comcast's cable television services in Vermont has increased slightly from approximately 110,000 prior to the acquisition to almost 112,000 subscribers, the total operating income derived from such services has grown from \$101 million for 2006 to \$200 million for 2015, and the net income related to such services has increased from \$19 million for 2006 to \$63 million for 2015.

As part of the process of determining whether to renew Comcast's CPG and, if so, upon what conditions, Comcast, the Vermont Department of Public Service ("Department" or "DPS"), and the Vermont Access Network ("VAN"), a membership organization consisting of 26 access management organizations ("AMOs")² in Vermont, have all presented evidence and proposals for the consideration of the Board. In making its determinations, the Board is required to review and consider the evidence and proposals for a renewed CPG under a variety of applicable criteria established by state and federal law. Relevant criteria relate, among other things, to Comcast's compliance with its existing CPGs, the quality of Comcast's service, the adequacy of support for public, educational, and governmental ("PEG") channels, and the reasonableness of the proposals in light of future cable-related community interests and needs.

In this Order, the Board adopts most of the CPG conditions proposed by Comcast as well as several conditions proposed by the Department or VAN that Comcast opposed, with modifications in some cases. The conditions adopted and the determinations made by the Board in this Order include the following.

2. PSB Rule 8.100 (B) defines an AMO as "a nonprofit entity apart from the cable television operator designated to receive PEG access support through the cable operator and contracted to manage public, educational, and governmental access channels and facilities for non commercial purposes." There are 22 designated AMOs in Vermont that have contracted with Comcast to manage public, educational, and governmental access channels and facilities in specified areas of Comcast's service territory.

- ***Line Extensions.*** The Board adopts a condition proposed by the Department related to line extensions. Under this condition, Comcast will be required during the 11-year term of the CPG to construct 550 miles of line extensions to currently unserved areas of the state. This condition, which will help address important state needs and interests, affords Comcast flexibility in determining where, when, and how to meet these line extension obligations over the term of the CPG.
- ***Comcast's Programming Guide.*** Although the record indicates that Comcast has substantially complied with most of the material terms of its existing CPGs, the Board is unable to conclude that Comcast has substantially complied with all the material terms of its CPGs. In particular, Comcast's electronic programming guide does not currently list, and has not listed for several years, the schedules for any of the 45 PEG access channels whose content is carried by Comcast as required by Comcast's existing CPGs. Given Comcast's apparent failure to comply with this CPG requirement, the Board will, as a condition of CPG renewal, require Comcast at its expense to make such modifications to its facilities as are necessary to enable Comcast's interactive programming guide to provide program-specific scheduling information to subscribers about all PEG access channels carried on its system in Vermont.
- ***Community Sites for the Origination of Live Programming.*** The Board regards the ability of PEG channels to provide live remote coverage of meetings of local government and other local events as central to the purposes of PEG access. Accordingly, the Board adopts a proposed condition of the Department which will continue to require Comcast at its expense to provide and maintain live origination capabilities at eligible community sites located within 500 feet of Comcast's cable plant, while also providing flexibility to Comcast by allowing it to meet its obligations through the deployment of alternative technologies.
- ***Activation of PEG Channels in High Definition.*** The Board does not adopt the proposal of VAN to require Comcast to provide PEG channels to Comcast subscribers in high definition ("HD"). However, the Board will open a proceeding related to the activation of HD PEG channels on Comcast's systems in Vermont upon a filed request made at least two years from today. The Board will also require Comcast to provide information with its annual report as to the percentage of its subscribers in Vermont who receive HD service and as to the number of channels (other than PEG channels) carried on its digital starter tier in standard definition without an HD channel equivalent.
- ***Other Proposed Conditions.*** This Order also addresses proposed CPG conditions related to, among other things: filings to accompany Comcast's annual reports; meetings with local officials; PEG channel reassignments; a statewide PEG access channel and statewide AMO; AMO capital funding; live simultaneous PEG programming; customer service, notices, and complaints; institutional networks; provision of internet service to community sites and AMO base production facilities;

a proposed discount on limited basic service for low-income seniors; PEG access to capacity on Comcast's video-on-demand platform; technology considerations affecting AMOs; and PEG channel quality.

II. PROCEDURAL HISTORY

On June 5, 2014, Comcast filed a request that the Board commence a proceeding, pursuant to 47 U.S.C. § 546(a)(1).

On July 30, 2014, the Board issued an order initiating this proceeding, as required by 47 U.S.C. § 546(a)(1), and scheduled a prehearing conference for August 20, 2014, which was subsequently rescheduled.

On October 1, 2014, the Board held a prehearing conference with Comcast and the Department. Comcast proposed, and the Department agreed, to delay the establishment of a schedule for this proceeding until February 2015.

On November 24, 2014, the Board issued a prehearing conference memorandum and notice of status conference and requested that the parties submit scheduling proposals for consideration at the status conference.

On March 2, 2015, Vermont Access Network ("VAN") filed a motion to intervene in this proceeding.

On March 4, 2015, the Board held a status conference. Comcast and the Department presented a joint proposal at the status conference that provided for meetings among the parties to discuss and narrow issues over a three-month period, after which a schedule would be proposed for the filing of a renewal application and testimony by Comcast. VAN submitted a proposal that would immediately set a full schedule for the proceeding.

On March 25, 2015, the Board issued a procedural Order granting VAN's motion to intervene, adopting the joint proposal of Comcast and the Department, and scheduling another status conference.

On July 1, 2015, the Board held a status conference at which a schedule for this proceeding proposed by the Department with the support of all parties was discussed.

On July 8, 2015, the Board issued a procedural Order adopting the proposed schedule.

On August 13, 2015, the Board issued a procedural Order that included minor revisions to the schedule related to public and technical hearing dates.

On September 23, 2015, Comcast filed a petition, a CPG renewal application, and other documents related to its application to renew the CPG (the “Petition”). The Petition included the prefiled testimony and exhibits of Daniel M. Glanville, Vice President of Government and Regulatory Affairs for Comcast’s Western New England Region..

On October 21, 2015, the Board held a public hearing about the renewal of Comcast’s CPG, utilizing the statewide facilities of Vermont Interactive Technologies.

On November 6, 2015, the Board issued a procedural Order generally approving a protective agreement related to allegedly confidential information.

On December 24, 2015, the Department filed a motion (with the agreement of the other parties) to amend the schedule, which was granted by the Board in a procedural Order issued on December 30, 2015.

On January 20, 2016, VAN filed a motion to amend the schedule to which the Department agreed and Comcast conditionally supported. The motion was granted by the Board in a procedural Order issued on January 22, 2016.

On January 26, 2016, the Department filed the prefiled testimony and exhibits of their three witnesses. The Department’s exhibits included a Community Needs Assessment (“CNA”) report (exh. CP-1).

On January 28, 2016, VAN filed the prefiled testimony and exhibits of its six witnesses.

On March 22, 2016, Comcast filed the rebuttal prefiled testimony of Mr. Glanville and exhibits to such testimony.

On May 10 and May 13, 2016, the Department filed motions to further amend the schedule to which the other parties did not object. The Board issued procedural Orders on May 11 and May 18, 2016, granting the Department’s requests.

On May 13, 2016, VAN filed prefiled rebuttal testimony and exhibits of five of its witnesses.

On May 18, 2016, the Department filed the prefiled rebuttal testimony and exhibits of one of its witnesses.

On May 19, 2016, the Board made a visit to Comcast’s call center and product lab in South Burlington, Vermont. Representatives of each of the parties attended the site visit.

On July 18, 2016, the Board held a technical hearing in Montpelier, Vermont. At the hearing, the prefiled testimony and exhibits of all witnesses were admitted, and each of the parties had the opportunity to examine the witnesses of the other parties.

On July 22, 2016, Comcast filed a proposed briefing schedule supported by all parties.

On August 4, 2016, the Board issued a procedural Order approving the briefing schedule and a Protective Order providing confidential treatment for two years of a Comcast exhibit entered into evidence.

On September 2, 2016, the parties filed briefs and proposals for decision (which are referred to in this Order as the “Comcast Brief,” the “DPS Brief,” and the “VAN Brief,” respectively).

On September 19, 2016, Comcast filed a request with the consent of the other parties to extend the deadline for the filing of reply briefs, which the Board granted in a procedural Order issued on the same date.

On September 29, 2016, the Board issued an Order requesting additional information from Comcast concerning its compliance with Dig Safe requirements under 30 V.S.A. § 7006 and PSB Rule 3.803.³

On October 6, 2016, the Department filed a reply brief (the “DPS Reply Brief”).

On October 7, 2016, Comcast and VAN each filed reply briefs (which are referred to as the “Comcast Reply Brief” and the “VAN Reply Brief,” respectively).

On October 28, 2016, Comcast filed a response to the Board’s request for additional information about Comcast’s compliance with Dig Safe requirements.

On November 9, 2016, the Department filed comments on Comcast’s October 28 filing.

III. SUMMARY OF PUBLIC COMMENTS

The Board conducted a public hearing on October 21, 2015, at thirteen sites throughout the state utilizing the facilities of Vermont Interactive Television. The Board heard from 39 members of the public at the public hearing before the Board had to conclude the hearing. Others

3. This request followed the issuance of four orders by the Board on August 25, 2016, related to notices of probable violations of Dig Safe requirements by Comcast.

attending the public hearing submitted written comments. Overall, the Board received more than 100 written comments related to Comcast's renewal application.

Almost all the public comments heard or received by the Board either supported the renewal of Comcast's CPG, in many cases subject to additional requirements, or expressed no opinion on such renewal. A significant number of comments either expressed appreciation for the services and features now provided by Comcast or favorably compared Comcast's customer service and responsiveness to that of its predecessor, Adelphia. An even greater number of comments received by the Board expressed concern about the costs of Comcast's cable television services.⁴

There was broad support both at the public hearing and in other comments for several of the positions advocated by VAN in this proceeding, especially related to: PEG access to Comcast's interactive programming guide; additional community sites capable of transmitting live local programming for PEG channels and for the maintenance of existing sites; the broadcast of PEG programming in high definition; and access to Comcast's video-on-demand platform for PEG content. Many comments emphasized the importance of the local and diverse programming provided on PEG channels, often highlighting the coverage of selectboard, planning, and school board meetings and other meetings and events, particularly given the significant reduction in the number of local media outlets covering such meetings and events. The Board also heard from the producers of video content for PEG channels about the opportunities provided by PEG access and the resulting benefits provided to the state, including the opportunity PEG channels provide to interested Vermonters to acquire training, skills, and experience in producing video content.

The few members of the public who submitted comments in opposition to the renewal of the CPG cited, among other things, the cost of Comcast's services or a general dissatisfaction with Comcast's services or business practices. In November, the Board received extensive comments from two members of the public who argued that the Board should not consider a renewed CPG for Comcast until the development of a final state telecommunications plan under 30 V.S.A. § 202d and the authorization and appointment of an independent public advocate to represent the public interest.

4. The Board is preempted under federal law from regulating rates for Comcast's services.

IV. LEGAL STANDARDS

This CPG renewal proceeding is governed by state and federal law. State and federal statutes applicable to this proceeding include 30 V.S.A. §§ 506 and 504(b) (c) and 47 U.S.C. § 546.

30 V.S.A. § 506 governs the renewal of CPGs for cable systems in Vermont. It provides that such CPGs may be renewed according to the criteria for granting an original CPG in 30 V.S.A. § 504 after the Board has made the findings required by Section 504. The issuance of a CPG under Section 504(b) requires that the Board first make findings that the applicant has complied or will comply with requirements adopted by the Board to ensure that a cable system provides:

- (1) designation of adequate channel capacity and appropriate facilities for public, educational, or governmental use;
- (2) adequate and technically sound facilities and equipment, and signal quality;
- (3) a reasonably broad range of public, educational and governmental programming;
- (4) the prohibition of discrimination among customers of basic service; and
- (5) basic service in a competitive market, and if a competitive market does not exist, that the system provides basic service at reasonable rates determined in accordance with section 218 of this title.

In addition, under 30 V.S.A. § 504(c), the Board must also ensure that the cable system provides or utilizes:

- (1) a reasonable quality of service for basic, premium or otherwise, having regard to available technology, subscriber interest and cost;
- (2) construction, including installation, which conforms to all applicable state and federal laws and regulations and the National Electric Safety Code;
- (3) a competent staff sufficient to provide adequate and prompt service and to respond quickly and comprehensively to customer and department complaints and problems;
- (4) unless waived by the board, an office which shall be open during usual business hours, have a listed toll-free telephone so that complaints and requests for repairs or adjustments may be received; and
- (5) reasonable rules and policies for line extensions, disconnections, customer deposits and billing practices.

Section 626 of the Communications Act,⁵ requires the Board, as the local franchising authority,⁶ to consider in the case of a renewal application by a cable operator whether:

- (A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
- (B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;
- (C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
- (D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

PSB Rule 8.230 largely echoes the federal statute in requiring the Board in any cable CPG renewal proceeding to ascertain whether:

- (A) The cable operator has substantially complied with the material terms of the existing certificate of public good and with applicable law;
- (B) The quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, has been reasonable in light of community needs;
- (C) The operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
- (D) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

Applicability of PSB Rule 8.214 to Renewal CPG

The parties are in agreement as to the applicability of the foregoing statutes and PSB Rule 8.230 to this proceeding, but Comcast appears to disagree with the other parties over whether the

5. See 47 U.S.C. § 546(c)(1). These criteria are specifically applicable to renewal proceedings initiated in accordance with 47 U.S.C. § 546(a)(2) and conducted pursuant to 47 U.S.C. § 546(a)(1), (b) and (c).

6. 30 V.S.A. §502(b) designates the Board as "the franchising authority in the state empowered to grant, renew and revoke certificates of public good for all cable television systems."

criteria set forth in PSB Rule 8.214 (also known as the “EMCO” criteria)⁷ are applicable to a cable CPG renewal proceeding.⁸ PSB Rule 8.214 provides as follows:

In determining whether to approve or reject a petition requesting a certificate of public good for a cable system area, the Board shall consider:

- A. The criteria of 30 V.S.A. Chapter 13.
- B. The criteria known as the EMCO criteria:
 - (1) financial soundness and stability, both of the applicant generally and the particular proposal;
 - (2) the present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future, and the ability to provide public access;
 - (3) the commitment to a construction and in-service schedule;
 - (4) the experience and ability of the applicant to run and manage a cable tv system;
 - (5) the rates proposed to be charged to customers;⁹
 - (6) consumer policies, particularly re: complaints and problems;
 - (7) availability of service to maximum number of residences;
 - (8) the quality of the engineering and materials used in the system;
 - (9) logical fit with neighboring systems.

In its brief, Comcast argues that the EMCO criteria in PSB Rule 8.214 are only to be used in connection with a cable provider’s initial application for a CPG but do not apply to renewal applications. Comcast maintains that the applicable criteria for renewal CPGs are set out in PSB Rule 8.230 and that the criteria in PSB Rule 8.214 are not applicable to renewal applications.

The Department maintains that the language of PSB Rule 8.214 is unambiguous in its applicability to any petition requesting a certificate of public good to own or operate a cable

7. These criteria were developed by the Board in connection with its review of applications for cable television CPGs. The application of these criteria in cable CPG proceedings was upheld by the Vermont Supreme Court in 1982. *In re EMCO CATV, Inc.* 141 Vt. 385 (1982).

8. Comcast Brief at 33-34; DPS Brief at 3, 4, 6, 7, 10, 11, 23, & 25-27 and DPS Reply Brief at 1-2. VAN agrees with the Department that the EMCO criteria are pertinent to a CPG renewal. For example, Davitian pf. at 5 & 6-9.

9. As noted in footnote 4 above, the Board is preempted under federal law from regulating rates for Comcast’s services. *See, also*, section VI. G. 1. “Basic Services in a Competitive Market” below.

television system. The rule states that “[i]n determining whether to approve or reject a petition requesting a certificate of public good for a cable system service area, the Board shall consider . . . [t]he criteria known as the EMCO criteria.” Accordingly, the Department concludes that all of the EMCO criteria from Rule 8.214 are applicable and should be considered by the Board, including the requirement that Comcast provide availability of service to a maximum number of residences. Moreover, the Department observes that Comcast addressed the EMCO criteria and acknowledged their applicability in its own prefiled testimony.¹⁰

The Board has generally applied the PSB Rule 8.214 criteria in CPG proceedings, including renewal proceedings.¹¹ The Board’s application form for CPGs and CPG renewals expressly requires all applicants to attach a statement indicating how the applicant will comply with the EMCO criteria.¹² For the Board to conclude that the EMCO criteria apply only to initial cable television applications would also seem inconsistent with the objective of 30 V.S.A. § 506 that requires the Board to use the same statutory criteria for renewal applications that it is required to use in original applications for cable television CPGs.¹³ Accordingly, the Board determines that the EMCO criteria (which all parties addressed in their respective prefiled testimony) are applicable to this proceeding.

10. “I provide an overview of how Comcast meets the federal governing criteria of its franchise, the statutory criteria in Vermont for such renewal, and the criteria for renewal established by Rules 8.230 and 8.214.” Glanville pf. at 2. *See, also*, Glanville pf. at 3:

As the Board did in the Comcast Order and other CPG and renewal orders, under each criterion I address the relevant statute or PSB Rule, including the standards known as the “EMCO Criteria.

11. *See*, for example, Docket 6101, Order of 4/28/00, and Docket 7077, Order of 12/29/05.

12. Form of Application for a Cable Television Certificate of Public Good (¶ 9). Although Comcast does not raise this issue in its brief, the Board acknowledges that the caption heading on PSB Rule 8.210, “Petitions (other than for renewal),” may create some confusion with respect to the applicability of that heading to PSB Rule 8.214. However, the Board’s practice in applying EMCO criteria to renewal CPGs since the adoption of PSB Rule 8.000 should have eliminated any possible uncertainty as their applicability to CPG renewals.

13. The first sentence of 30 V.S.A. § 506 provides as follows:

Certificates with a limited duration may be renewed during or at the end of the period, after opportunity for hearing held according to the criteria for the granting of an original certificate in section 504 of this title and after the board has made the finding required by that section.

The Board also notes that PSB Rule 8.230, unlike PSB Rule 8.214, makes no reference to the applicability of the statutory criteria of 30 V.S.A. Chapter 13, including Sections 504 and 506, to CPG applications.

Evidentiary process under 47 U.S.C. § 546(a), (b) & (c) as related to this proceeding

47 U.S.C. § 546 contemplates a bifurcated two-stage evidentiary process with time requirements in which the Board in the first stage would ascertain future cable-related community needs and interests and the cable operator's performance under its existing franchise (often referred to as the "ascertainment" process). In the second stage of the process, the cable operator submits a proposal which commences the second stage of the process. The operator's proposal, subject to 47 U.S.C. § 544, is required to "contain such material as the franchising authority may require, including proposals for an upgrade to the cable system."¹⁴

Comcast and the other parties have always contemplated that there would be one administrative proceeding related to the renewal of the CPG, and all the parties' proposed schedules have been consistent with this objective. As a result, the ascertainment and proposal review processes have essentially been combined in this proceeding. Accordingly, this Order addresses all matters that would be addressed in the initial ascertainment process under Section 626(a)(1) and the proposal review process under Section 626(c) of the Communications Act.

Overlap of state and federal criteria; Application of relevant criteria in this Order

Applicable state and federal law are not inconsistent, and there is a significant overlap between their respective criteria.¹⁵ Federal law establishes broad criteria whereas state law provides somewhat greater specificity as to the relevant criteria. To the extent practicable in this Order, the criteria from different sources of state and federal law are grouped together to avoid repetition in the findings and discussions.¹⁶ Findings and discussions related to Comcast's compliance with the conditions of its existing CPGs, future cable-related community needs and interests, the reasonableness of proposed CPG conditions in light of such needs and interests, and some related legal criteria are largely grouped together in section VI. F. below for the same reason.

14. 47 U.S.C. § 546(b)(1) & (2).

15. Comcast Brief at 4; DPS Brief at 2.

16. In a few cases, separate elements of a criterion are addressed under different headings below (for example, 30 V.S.A. § 504(c)(5) and PSB Rule 8.214(B)(1)).

V. POSITIONS OF PARTIES

Comcast seeks renewal of its CPG and maintains that it has met all criteria of applicable federal and state law for the renewal of its CPG.¹⁷ Comcast requests that the Board issue a renewal CPG, subject only to the conditions proposed by Comcast in this docket, in accordance with its proposal (“Comcast’s CPG Proposal”).¹⁸ Comcast opposes, and asks the Board to reject, the additional or modified conditions proposed by the Department and VAN. It contends that the conditions proposed by those two parties are not necessary, costly, discriminatory, not clear (or precise enough to avoid disputes), outside the scope of this docket, or beyond the Board’s authority as the franchising authority for Vermont.¹⁹

The Department recommends that the Board issue a renewed CPG to Comcast authorizing Comcast to provide cable television service throughout its service territory in Vermont so long as the conditions recommended by the Department are adopted by the Board.²⁰ The Department’s recommended conditions include eight additional conditions proposed by the Department as well as the conditions submitted by Comcast with its petition except to the extent Comcast’s proposed conditions conflict with the Department’s proposed conditions.²¹ The Department believes that issuance of a renewed CPG to Comcast, subject to the conditions recommended by the Department, will promote the general good of the state.²² The Department takes no position on any applicable legal criteria relevant to the Petition that are not discussed in its brief.²³

17. Comcast Brief at 30.

18. Comcast filed an initial proposal for a new CPG as an exhibit to Mr. Glanville’s prefiled testimony (exh. DMG 3), filed a revised proposal (exh. DMG 11) with Mr. Glanville’s rebuttal prefiled testimony, and filed its final proposed CPG on September 2, 2016, as Attachment 1 to the Comcast Brief. For purposes of this Order, the proposed CPG filed by Comcast on September 2, 2016, is referred to as “Comcast’s CPG Proposal.” The briefs of each of the parties included their final proposals for CPG conditions – namely, Attachment 1 to the Comcast Brief, an updated version of exh. LGD 10 filed with the VAN Brief, and a statement of the Department’s proposed conditions contained in the DPS Brief at 27–29. The findings in this Order reflect the final proposed CPG conditions of each party as reflected in their briefs and attachments to their briefs.

19. Comcast Brief at 30–31.

20. DPS Brief at 1.

21. *Id.* at 27.

22. *Id.*

23. *Id.* at 1.

VAN was permitted to intervene in this proceeding for purposes related to Comcast's obligations to provide PEG access channel capacity, facilities, and financial support.²⁴ VAN does not oppose issuance of a CPG to Comcast but makes a number of recommendations for the continuation of certain conditions in the existing CPG, for updating other conditions related to PEG access, and for new conditions not included in the existing CPGs.²⁵ VAN contends that the CPG conditions proposed by Comcast and by the Department do not adequately address community needs and interests and are not sufficient to provide assurance that Comcast will provide adequate PEG-related channel capacity or facilities.²⁶

There are broad areas of apparent agreement between Comcast and the Department with respect to a variety of matters under consideration in this CPG proceeding, including with respect to most of the conditions in Comcast's CPG Proposal. However, the Department's proposal would add new conditions, retain some existing conditions that Comcast's CPG Proposal omits (existing Docket 7077 CPG conditions 3, 6, and 68), and would modify some other existing conditions in ways that Comcast or, in some cases, VAN opposes. The Department seeks a condition related to line extensions that would require Comcast to construct at least 550 miles of line extensions during the term of a new CPG. The Department also proposes a new condition, based on the condition in another renewal CPG, that would provide a discount for low-income seniors on limited basic service and also makes proposals for the resolution of issues related to two PEG access channel conditions.

There are some significant areas of disagreement between Comcast and VAN about interpretations of, and compliance with, existing conditions related to PEG access and about the appropriate conditions to include in a renewal CPG. In addition, Comcast and VAN differ over the inclusion of several conditions in the new CPG. There are some cases in which Comcast and VAN would modify existing conditions in different ways (for example, existing Docket 7077 CPG conditions 8, 11, 22, 23, and 26). In addition, Comcast's proposal omits conditions from the existing CPGs that VAN proposes to retain either as is or with minor or significant

24. Docket 8301, Procedural Order regarding Schedule and Motion to Intervene of 3/25/15 at 3 4.

25. VAN Brief at 1.

26. VAN Reply Brief at 1.

modifications (for example, existing Docket 7007 CPG conditions 19, 20, 21, 24, 25, 30, 31, 60, 61, 62, 63, 64, 65, 68, 69, and 72). In addition, VAN's proposal includes new conditions related to the activation of high definition channels for PEG channels, Comcast's interactive programming guide, the provision of video-on-demand capacity for PEG channels, capital funding, technology considerations, and PEG channel quality.

VI. FINDINGS AND DISCUSSION

Based on the evidence of record, the Board makes the following findings:

A. Background

1. Comcast is a Delaware limited liability company authorized to do business in Vermont under the trade name "Comcast." Daniel M. Glanville ("Glanville") for Comcast pf. at 5-6; Petition at 1; exh. DMG-2(B).

2. Comcast is authorized to provide cable television service under a CPG that was issued and amended in Docket 7077 ("Docket 7077 CPG" or "Existing CPG")²⁷ to the cities, towns, or gores of Addison, Andover, Arlington, Athens, Avery's Gore, Baltimore, Barnard, Barton, Belvidere, Bennington, Benson, Berlin, Bethel, Braintree, Brandon, Brattleboro, Bridgewater, Bridport, Brighton, Bristol, Brookfield, Brookline, Brownington, Burlington, Cabot, Calais, Cambridge, Castleton, Cavendish, Charleston, Charlotte, Chester, Chittenden, Clarendon, Colchester, Cornwall, Coventry, Craftsbury, Danby, Derby, Dorset, Dummerston, Duxbury, East Montpelier, Eden, Elmore, Essex, Fair Haven, Fairfax, Fairfield, Ferdinand, Ferrisburgh, Georgia, Glastenbury, Glover, Goshen, Grafton, Grand Isle, Greensboro, Guilford, Halifax, Hancock, Hardwick, Hartford, Hartland, Highgate, Hinesburg, Holland, Hubbardton, Huntington, Hyde Park, Ira, Irasburg, Jamaica, Jay, Jericho, Johnson, Killington, Landgrove, Leicester, Lewis, Lincoln, Londonderry, Lowell, Ludlow, Manchester, Marlboro, Marshfield, Mendon, Middlebury, Middlesex, Middletown Springs, Milton, Monkton, Montpelier, Moretown, Morgan, Morristown, Mt. Holly, Mt. Tabor, New Haven, Newark, Newport City, Newport Town,

27. The Docket 7077 CPG was issued on December 29, 2005. The CPG was subsequently amended on September 27, 2006 (to change the name of the certificated entity), on October 16, 2008 (to authorize Comcast to extend cable television service to the towns of Grand Isle, North Hero, and South Hero), and on April 19, 2010 (to release Comcast from a bonding requirement).

North Hero, Norwich, Pawlet, Peru, Pittsfield, Pittsford, Plainfield, Plymouth, Pomfret, Poultney, Pownal, Proctor, Randolph, Reading, Richmond, Ripton, Rochester, Rockingham, Roxbury, Rupert, Rutland City, Rutland Town, Salisbury, Sandgate, Searsburg, Shaftsbury, Sharon, Sheffield, Shelburne, Sheldon, Shrewsbury, South Burlington, South Hero, Springfield, St. Albans City, St. Albans Town, St. George, Stamford, Stannard, Starksboro, Stockbridge, Stowe, Strafford, Stratton, Sudbury, Sunderland, Sutton, Swanton, Thetford, Tinmouth, Troy, Underhill, Vergennes, Vernon, Walden, Wallingford, Waltham, Wardsboro, Warner's Grant, Warren's Gore, Waterbury, Waterville, Weathersfield, Wells, West Haven, West Rutland, West Windsor, Westfield, Westford, Westminster, Westmore, Weston, Weybridge, Wheelock, Whiting, Williston, Windham, Windsor, Winhall, Winooski, Wolcott, Woodbury, Woodford, Woodstock, and Worcester. Glanville pf. at 5; Petition at 1-2; Docket 7077 CPG.

3. The Docket 7077 CPG was issued in connection with the acquisition of the Vermont cable systems of Adelphia by Comcast. The acquisition was completed on July 31, 2006. Glanville pf. at 5; Docket 7077, Order of 12/29/05; Docket 7077, Order on Waiver of Notice Period for Name Change of 8/30/06 at 1.

4. Comcast is also authorized to provide cable television service under a CPG issued in Docket No. 7379 ("Docket 7379 CPG")²⁸ to the following Vermont towns: Albany, Bakersfield, Berkshire, Enosburgh, Fletcher, Franklin, Montgomery and Richford. Glanville pf. at 2-3 & 6; Petition at 2; Docket 7379 CPG.

Discussion re Consolidation of Docket 7379 CPG into Docket 7077 CPG

As set forth in its filing of September 23, 2015, Comcast requests that the Board renew both the Docket 7077 CPG and the Docket 7379 CPG in this proceeding and consolidate the two CPGs in the renewal CPG.²⁹ In his initial prefiled testimony, Mr. Glanville states that Comcast is seeking the consolidation of these two CPGs for the purposes of efficiency and judicial economy and that it has conferred with the Department about this request. None of the other

28. The Docket 7379 CPG was issued on March 21, 2008, in connection with the acquisition by Comcast of substantially all the cable television system assets of North Country Cablevision, Inc.

29. See Petition at 3 (¶ 5); Glanville pf. at 2-3; exh. DMG 2 at 2-3.

parties have objected to Comcast's request to consolidate the two CPGs for purposes of this renewal proceeding.

The Board has consolidated multiple CPGs issued to the same cable service provider in prior proceedings related to the renewal or issuance of CPGs.³⁰ At the time it was acquired by Comcast, the cable system of North Country Cable System, Inc. ("North Country") served approximately 1,000 subscribers utilizing 63 miles of cable plant.³¹ The service territory covered by the Docket 7379 CPG includes seven towns in Franklin County and one town in Orleans County.

There is no indication that the Department's Community Needs Assessment excluded the service territory covered by the Docket 7379 CPG. The assessment report was filed with the Board four months after Comcast's request to consolidate the two CPGs in this proceeding. Given Comcast's prior discussions with the Department about consolidating the CPGs and the Department's absence of objection, it is reasonable to conclude that the assessment included the service territory covered by the Docket 7379 CPG.

Based on the foregoing, the Board determines that the consolidation of the Docket 7379 CPG into the Docket 7077 CPG is appropriate for purposes of this CPG renewal proceeding. References in this Order to the existing CPGs mean the Docket 7077 CPG and Docket 7379 CPG collectively; the defined term "Existing CPG" refers to the Docket 7077 CPG.

B. Financial, Legal, & Technical Ability; Experience; Financial Soundness & Stability

[47 U.S.C. § 546(c)(1)(C), PSB Rules 8.214(B)(1) & (4), and 8.230(C)]

5. Comcast is a financially sound and stable company that has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in its proposal as

30. See, for example: Docket 6101, *Petitions for renewal of CPGs held by Mountain Cable Company and Better TV, Inc. of Bennington, both d/b/a Adelphia Cable Communications*, Order of 4/28/00 at 168 (issuing "a single, merged" CPG to Mountain Cable Company in connection with the renewal of CPGs issued in Dockets 5247, 5665, 5774, and 5830; and Docket 7077, Order of 12/29/05 at 5 & 36 (all CPGs issued to the Adelphia affiliates revoked and replaced by a single CPG issued in accordance with a proposal for "a single, uniform CPG for these franchises that substantially accepts all of the conditions imposed on the various Adelphia Affiliates").

31. Docket 7379, *Joint Petition of North Country Cablevision, Inc. to sell substantially all of its Vermont assets, and Comcast to own and operate North Country's cable television system*, Order of 3/21/08 at 3 (finding 2).

well as the experience and ability to run and manage a cable television system. This finding is supported by findings 6 through 10 below.

6. As of December 31, 2014, the Comcast Corporation,³² had net assets of \$159.4 billion and shareholders' equity of \$52.7 billion. For the year ending December 31, 2014, the Comcast Corporation had consolidated revenues of \$68.8 billion, operating income of \$14.9 billion, and consolidated cash flow of \$22.9 billion. Glanville pf. at 14-16; exh. DMG-8A.

7. Comcast Corporation is a provider of video, high-speed internet, digital voice, and other services and technologies. Comcast has network facilities covering portions of 39 states and the District of Columbia and, as of December 31, 2016, served approximately 22.3 million video customers through its cable systems. Comcast also owns NBCUniversal, a media, news, and entertainment company. Glanville pf. at 4, 14-15; exh. DMG-8A.

8. Comcast began offering cable television services in 1963 and has over 50 years of experience in owning, managing, and operating cable television systems. Glanville pf. at 16.

9. Comcast has owned and operated a cable system in Vermont since July 31, 2006, and as of December 31, 2014, provided cable service to over 111,900 video customers in Vermont. Glanville pf. at 16; Docket 7077, Order on Waiver of Notice Period for Name Change of 8/30/16 at 1.

10. For the year ending December 31, 2014, Comcast had total operating income (or revenues) of \$186,665,709 and net income of \$51,170,860 related to the provision of cable television services³³ in Vermont. For the year ending December 31, 2013, Comcast had total

32. Comcast is a subsidiary of the Comcast Corporation. Exh. DMG 8A (10 K exhibit 21.1).

33. The income statements from Comcast's annual reports filed under 30 V.S.A. §§ 22 and 514 (exh. SF 1 and exh. Comcast 4) sets forth cable television revenue by line item. There is nothing in the income statement line items or the record to indicate that these income statements include revenue from any Comcast services other than cable television, such as internet access or digital voice.

If the income statements in the exhibits include only cable television revenues as appears to be the case, an inconsistency would exist between the definition of gross revenues in condition 4 of the Existing CPG and the gross revenue amount that has been used in computing the gross revenue tax. Comcast's CPG Proposal and condition 4 of the Existing CPG both include as one of the components of gross revenues "revenues from Internet access service until such time that a gross revenue tax is paid on such revenues as telecommunications services." The gross revenue on which the tax has been computed as set forth in Comcast's annual reports is identical to the number shown as total operating revenue in the annual reports' income statement (see, e.g., section 1.1 of Comcast's 2014 Annual Report). As there is no line item on the income statement related to internet service, it would appear that the gross revenue on

(continued...)

operating income of \$178,660,820 and net income of \$39,486,238 for its Vermont cable television operations.³⁴ Sean Foley (“Foley”) for the Department pf. at 1-2; tr. (7/18/16) at 91-92 (Foley); exh. SF-1.

C. Facilities, Equipment, and Signal & Service Quality; Construction & Engineering

[30 V.S.A. § 504(b)(2), (c)(1) & (2); 47 U.S.C. § 546(c)(1)(B);
PSB Rules 8.214(B)(2) & (8) and 8.230(B)]

11. Comcast (a) has adequate and technically sound facilities and equipment, and signal quality, (b) provides a reasonable quality of service and variety of service offerings in accordance with the requirements of 30 V.S.A. § 504(c)(1), 47 U.S.C. § 546(c)(1)(B), and PSB Rule 8.230(B), and (c) utilizes construction, including installation, which conforms to all applicable state and federal laws and regulations and the National Electric Safety Code. Comcast’s system has the capacity to offer additional varied services in the future, and the quality of the engineering and materials used in Comcast’s system in Vermont is adequate. This finding is supported by findings 12 through 22 below.

12. Comcast operates and maintains its cable systems in Vermont so as to comply with the technical standards set forth in the rules and regulations of the Federal Communications Commission (“FCC”) as they apply to cable television systems, including Subpart K of part 76 of the FCC rules, as required by PSB Rule 8.363(A). Glanville pf. at 8; Granville reb. pf. at 34; exh. CRC-2 at 3.

13. In 2010, Comcast rebuilt portions of its Newport system and the former North Country system to a bandwidth of at least 750 MHz. Glanville pf. at 8; Glanville reb. pf. at 34.

33. (...continued)
which the tax is being computed has not included revenues from internet access service.

Although the line item description does not in any way suggest this is the case, it is conceivable that the line item “Other Tier Subscriber Revenue” in the income statements may include revenue from internet access services. If this is the case, it may explain the inconsistency noted above between the definition of gross revenues in condition 4 of the Existing CPG and the gross revenue on which the gross revenue tax has been computed in the past.

34. The Board notes that, as set forth in Comcast’s Annual Report for 2015, Comcast derived total operating revenues of \$199,668,654 and net revenues of \$63,155,210 from its Vermont cable television operations in 2015. Comcast 2015 Annual Report filed by Comcast with the Board on April 13, 2016 (Section 1.1 at 6).

14. Comcast currently maintains a hybrid fiber-optic/coaxial cable network capable of carrying a minimum bandwidth of 750 MHz in all of its Vermont systems. Glanville pf. at 8.

15. Comcast continues to invest in its Vermont infrastructure in order to provide additional video services, such as high definition television, video on demand, and digital video recorder (“DVR”) service. Glanville pf. at 8; Granville reb. pf. at 34.

16. Comcast commenced in 2010 and completed in 2012 a digital network enhancement project in Vermont, which provided customers with more high definition (“HD”) programming, additional digital channels, more video-on-demand content, and an improved television viewing experience. Glanville pf. at 8.

17. In 2013, Comcast introduced the X-1 entertainment system which provides customers with features such as: a search functionality to live television video, video-on-demand content, and digitally recorded content; a talking guide for visually impaired viewers; and a voice-activated remote. This cloud-based platform enables cable television subscribers to download recordings and to stream live television channels and recordings to mobile devices and computers using the subscribers’ in-home WiFi network. Glanville pf. at 8-9.

18. Comcast offers a broad range of programming that is available in a range of different tiers of services, including a limited basic tier, an expanded basic tier, and a digital economy tier. Subscribers are able to receive more than 100 HD channels. Glanville pf. at 9; exh. DMG-6.

19. Comcast currently provides 100% digital picture and sound to its customers. Glanville pf. at 8.

20. The construction, installation, maintenance, and repair of Comcast’s cable systems conforms with: the *Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines* of the National Bureau of Standards, U.S. Department of Commerce; the latest edition of the National Electric Safety Code; and all applicable Federal, state, and municipal laws, ordinances, and regulations. Glanville pf. at 10.

21. Comcast uses sound and durable materials in the construction of line extensions. Glanville pf. at 10.

22. Comcast systems are designed and built so that closed caption data can pass through as required by PSB Rule 8.363(B). Glanville reb. pf. at 42-43; exh. CRC-2 at 4.

D. Consumer Policies & Complaints; Staff & Office; Disconnections, Deposits, & Billing

[30 V.S.A. § 504(c)(3), (c)(4) &(c)(5); 47 U.S.C. § 546(c)(1)(B);
PSB Rule 8.230(B) & PSB Rule 8.214(B)(6)]

23. Comcast (a) has a competent staff sufficient to provide adequate service and to respond to customer and Department complaints and problems, (b) maintains an office which is open during usual business hours and has a listed toll-free telephone so that complaints and requests for repairs or adjustments may be received, (c) has reasonable rules and policies for disconnections, customer deposits and billing practices, and (d) has reasonable consumer policies generally and with respect to complaints and problems. Comcast's response to consumer complaints and its billing practices have been reasonable in light of community needs and interests. This finding is supported by findings 24 to 34 below.

24. Comcast customers can visit either a Comcast service center or an Xfinity Store for assistance during normal business hours. Glanville pf. at 13.

25. Comcast operates an Xfinity store or service center in Newport, Rutland, South Burlington, and Springfield, Vermont. Comcast also operates a service center in Lebanon, New Hampshire. Exh. CRC-2 at 42.

26. Comcast customer account executives are available by phone at all hours and may be reached by calling 1-800-COMCAST or 1-800-XFINITY. Glanville pf. at 13.

27. Comcast customers may also utilize self-help tools that are available through Comcast's website at xfinity.com or by using applications on smartphones or through Comcast's X1 set-top box. Glanville pf. at 13.

28. Comcast maintains call centers in both New England and nationwide, with staff that are trained to handle a variety of customer issues. Glanville pf. at 12.

29. The Department is able to direct complaints that it receives from Comcast customers to a Comcast regulatory supervisor based in Philadelphia, Pennsylvania. Peterson pf. at 5.

30. For customer complaints that relate to local issues, such as outages or general policy questions, the Department is able to contact a Comcast regional manager for government and regulatory affairs based in Rutland, Vermont. Peterson pf. at 5.

31. Comcast annually sends all notices to its customers that are required by federal and Vermont law, including the “Quality of Service Notice,” the “Billing Practices Notice,” the “Complaint and PEG Notice,” the “Important Notices to our Customers,” and the “Annual Notice.” Comcast maintains a service quality plan (“SQP”) regarding measurement and reporting of its performance with respect to the customer service benchmarks found in 47 C.F.R. § 76.309, and over the past nine years, Comcast has generally met the SQP benchmarks. Glanville pf. at 11–12.

32. Although the Department has received 426 customer complaints against Comcast since January 2014, forty-eight of which were escalated due to Comcast fault, Comcast generally has a good record with respect to responding to consumer complaints. Peterson pf. at 4.

33. The existing CPGs establish a time period for Comcast to respond to customer complaints submitted through the Consumer Affairs and Public Information Division (“CAPI”) of the Department. With the exception of twenty-four incidents where Comcast failed to meet the required regulatory response time, Comcast is in compliance with existing CPG conditions related to customer complaints. Peterson pf. at 5; Existing CPG at 20; Docket 7379 CPG at 13.

34. The Department found that Comcast is in compliance with CPG conditions relating to disconnections, customer deposits, and billing practices. Peterson pf. at 5.

E. Department’s Community Needs Assessment of Community Needs and Interests

[47 U.S.C. § 546(c)(1)(D); PSB Rules 8.230(D) and 8.231]³⁵

35. The Department completed a Community Needs Assessment (“CNA”), pursuant to PSB Rule 8.231, in response to Comcast’s petition to renew its CPG. Peterson pf. at 2.

36. Comcast’s service territory touches every county in Vermont, and the Department conducted a focus group meeting in each of Vermont’s fourteen counties, including two focus group meetings in Chittenden County. Peterson pf. at 2; exh. CP-1 at 1.

37. For each focus group meeting, the Department sought to invite a broad group of local community leaders, including local politicians and selectboard members, leaders of non-profit

35. This section (VI. E.) addresses the methods and scope of the Department’s Community Needs Assessment. The findings and conclusions of that assessment are addressed in section VI. F. below.

entities, educational professionals, attorneys, medical professionals, members of local chambers of commerce and regional development corporations, and active users and producers of PEG programming. The Department asked AMOs to assist the Department in identifying local community leaders to attend the focus group meetings. Peterson pf. at 2 3.

38. The Department invited 940 people to attend the focus group meetings, and a total of 124 people attended the fifteen focus group meetings. Exh. CP-1 at 1 2.

39. As part of the CNA, the Department gathered additional information and feedback through an informal online survey. A link to the informal survey was sent to all focus group invitees. The Department also gathered letters of support and comments from members of the public regarding the AMOs and PEG programming. Peterson pf. at 2 3; exh. CP-1 at 1 5.

40. The Department commissioned a scientifically valid survey, which obtained survey results by telephone from 399 randomly selected respondents that reside within Comcast's service territory. Exh. CP-1, Attachment D at 5.

F. Compliance with Existing CPG; CPG Proposals; Related Criteria

[47 U.S.C. § 546(c)(1)(A) & (D) and PSB Rule 8.230(A) & (D);
30 V.S.A. § 504(b)(1), (b)(3), & (c)(5); PSB Rule 8.214(B)(1), (2), (3), & (7)]

41. Comcast has substantially complied with most of the material terms of the Docket 7077 CPG, the Docket 7379 CPG,³⁶ and applicable law. This finding is supported by findings 31 through 34 above and, as applicable, findings 42 through 217 below.

42. Comcast maintains that it is in substantial compliance with the material terms and conditions of its current CPG and with laws applicable to its cable system. Glanville pf. at 6 7.

43. During this proceeding, VAN identified issues related to Comcast's compliance with certain conditions of the Existing CPG and about whether Comcast's CPG Proposal is reasonable to meet future cable-related community needs and interests. Lauren-Glenn Davitian ("Davitian") for VAN pf. at 8, 11, 17, & 32-33 and reb. pf. at 4-7, 30-31; Scott Campitelli ("Campitelli") for VAN pf. at 5-6 and, generally; Robert Chapman ("Chapman") for VAN pf. at 12-13, 15 & 16 and reb. pf. at 21; Seth Mobley ("Mobley") for VAN pf. at 13 and reb. pf. at 3-6; Andy Crawford

36. The Docket 7379 CPG for the North Country system issued to Comcast in 2008 generally contains the same conditions as the Docket 7077 CPG.

(“Crawford”) for VAN reb. pf. generally; Lisa Byer (“Byer”) for VAN pf. at 7, 9, & 29; exhs. LGD-2, LGD-5, LGD-6, LGD-12, LGD-14, LGD-15, and LGD-16.

44. Comcast’s CPG Proposal, subject to the modifications and additional conditions approved by the Board in this Order, is reasonable to meet future cable-related community interests and needs, taking into account the cost of meeting such needs and interests and is a financially sound and stable proposal. This finding is supported by, as applicable, findings 45 to 217 below.

(1) General Terms - Existing CPG Conditions 1-16 and Proposals

[47 U.S.C. § 546(c)(1)(A)&(D); PSB Rule 8.230(A) &(D)]

45. Comcast’s CPG Proposal would modify condition 1 of the Existing CPG³⁷ related to the employment of a regulatory affairs manager to oversee Vermont compliance by designating a regulatory affairs staff person whose responsibilities would include acting as the primary liaison to CAPI and overseeing compliance with Vermont law governing cable operators.³⁸ Neither of the other parties objects to the modifications of this condition proposed by Comcast. Glanville reb. pf. at 16; Existing CPG; Comcast’s CPG Proposal; DPS Brief at 27; exh. LGD-10 (updated 9/2/16).

46. Comcast’s CPG Proposal does not include condition 2 of the Existing CPG related to the lease, sale, or sharing of facilities in Vermont with affiliates. Neither of the other parties objects to this omission. Existing CPG; Comcast’s CPG Proposal; DPS Brief at 27; exh. LGD-10 (updated 9/2/16).

47. Comcast’s CPG Proposal omits Condition 3 of the Existing CPG. The Department seeks to retain this condition in a renewed CPG. Condition 3 of the Existing CPG requires the filing of tariffs and customer agreements to the extent required by Vermont law. Corey R. Chase

37. Condition 1 of the Existing CPG provides as follows:

For the duration of this Certificate, Comcast shall employ a Regulatory Affairs Manager separate from the Regional Manager position whose responsibility shall include oversight of Comcast’s compliance with Vermont statutes, rules, orders and other regulations governing cable operators.

38. The condition proposed by Comcast provides as follows:

For the duration of this CPG, Comcast shall designate a Regulatory Affairs staff person to serve as a primary liaison to the Consumer and Public Information Division of the Department (“CAPI”) and whose responsibilities shall include oversight of Comcast’s compliance with Vermont statutes, rules, orders and other regulations governing cable operators.

(“Chase”) for the Department pf. at 16; Glanville reb. pf. at 10-11; Existing CPG; Comcast’s CPG Proposal; DPS Brief at 27.

48. Comcast’s CPG Proposal would omit condition 6 of the Existing CPG. The Department seeks to retain this condition in a renewed CPG. Condition 6 of the Existing CPG provides that “Comcast shall not itemize on subscriber bills the Vermont gross revenue tax, imposed on Comcast pursuant to 30 V.S.A. § 22, unless Vermont law allows such itemization.” Comcast does not itemize the gross revenue tax on subscriber bills and believes the condition is unnecessary. However, Comcast will accept such a condition in a renewal CPG if the word “shall” in the existing condition is changed to “will” in the renewal CPG. Chase pf. at 16; Glanville reb. pf. at 11;³⁹ Existing CPG; Comcast’s CPG Proposal; DPS Brief at 27.

49. Comcast maintains that it has complied with condition 7 of the Existing CPG related to a cable advisory board.⁴⁰ The cable advisory board has not proven to be a particularly effective means for providing public input on community needs or for serving as a vehicle for two-way communication with Comcast. Although VAN believes that Comcast has not fully complied with condition 7 of the Existing CPG, it agrees with Comcast that the original construct for this condition has not worked in reality. Neither Comcast’s CPG Proposal nor VAN’s final proposal include a condition related to a cable advisory board. Glanville reb. pf. at 17-18; Byer pf. at 9-10 & reb. pf. at 5-6; Comcast’s Proposed CPG; VAN Brief at 3-4.

50. Comcast and VAN have each submitted proposals for modifications to Condition 8 of the Existing CPG. The existing condition provides as follows:

8. On at least a bi-annual basis, Comcast’s senior Vermont management shall invite city and town government officials in each of the former Adelphia cable systems to meet for the purpose of exchanging information about community needs and the Company’s plans. These meetings shall be conducted on a system-wide basis and the PEG Access Management Organization (“AMO”) or AMOs serving that system shall also be invited to these meetings. For smaller

39. See, also, Comcast Reply Brief at 4.

40. Condition 7 of the Existing CPG provides as follows:

Comcast shall fund a statewide cable advisory board which shall be self governing and independent of Comcast to provide public input on community needs and to serve as a vehicle for two way communication with the Company. At least annually, Comcast shall request to meet with the statewide advisory board.

systems, such meetings may be held under the auspices of a regional planning commission or other appropriate regional entity. The Company shall submit summaries of these meetings, including the recommendations made by participants and the Company's response, to participants, the Board and the Department.

Lisa Byer ("Byer") for VAN pf. at 13-15 and reb. pf. at 6-7; Glanville reb. pf. at 18; Existing CPG; Comcast's CPG Proposal; VAN Brief at 59-60.

51. VAN's proposed condition is identical to Existing CPG condition 8 except that it provides for meeting invitations at least annually rather than at least twice a year as is currently required and replaces references to the "former Adelpia cable systems" with a reference to "Comcast's cable systems." Byer pf. at 13-14; VAN Brief at 59-60.

52. Comcast opposes the retention of the language in the existing condition for planning meetings as unnecessary, ineffective, and duplicative. Glanville reb. pf. at 18.

53. Comcast's proposed CPG Condition is similar to a condition in the Docket 7820 CPG issued to The Helicon Group, L.P., d/b/a Charter Communications ("Charter"), a docket in which VAN was a party and supported the CPG condition. Comcast's proposed condition is as follows:

On at least an annual basis, Comcast management with responsibility for Vermont operations shall communicate with city and town government officials via U.S. Mail and upon request of such city and town government officials, make reasonable efforts to meet. Attending a meeting of the AMO Board of Directors is sufficient to meet this condition, provided that Comcast notifies the city and town government officials in the AMO's service territory at least two weeks in advance, of their scheduled attendance at the meeting and of their intention to discuss the community's needs and how Comcast and/or the AMOs can address them.

Glanville reb. pf. at 18; Comcast's CPG Proposal.

54. Although VAN agreed to a similar condition in a memorandum of understanding related to Charter's CPG renewal in Docket 7820, VAN views the circumstances as different in this case than in Charter's CPG renewal proceeding because the footprint of the Comcast cable system affects more than 90% of the state and because the relationships between the AMOs and the cable operator are much better in the case of Charter than in the case of Comcast. Byer reb. pf. at 6.

55. In VAN's view, Comcast's proposed language for this condition is not clear in its intent to encourage planning meetings between Comcast management and city and town government officials. Moreover, in VAN's view, the proposed language does not provide adequate notice to

city and town administrators to schedule or properly prepare for the meeting, relies on mailings from Comcast (which may not be treated as important unless otherwise indicated), and does not require the participation of the applicable AMO. Byer pf. at 14.

56. Comcast's CPG Proposal omits or modifies some current annual filing requirements in condition 11 of the Existing CPG with respect to documents that accompany the annual report that Comcast is required to file pursuant to 30 V.S.A. § 22 and 30 V.S.A. § 514.⁴¹ Comcast's CPG Proposal at 4-5; Existing CPG at 4-5.

57. The parties are largely in agreement on Comcast's proposed changes to condition 11 of the Existing CPG, except that VAN now supports retaining the requirement of the existing condition that Comcast provide "a separate map identifying the fiber runs and node locations supporting the current service areas, which shall be maintained as confidential and proprietary." Byer pf. at 18-19; exh. LGD-10 (updated 9/2/16) at 3-4; DPS Brief at 27;

58. Comcast's CPG Proposal makes some additional modifications to the language of some of the general terms of the Existing CPG to which neither of the other parties objects. Comcast's CPG Proposal at 2-6; exh. LGD-10 (updated 9/2/16) at 1-5; DPS Brief at 27.

Discussion of general terms - Existing CPG conditions 1-16 and proposals

Discussion of unopposed modifications to Existing CPG conditions 1 to 16

The modifications in Comcast's CPG Proposal to general term conditions of the Existing CPG to which no party objects appear to be reasonable. Accordingly, these modifications are approved by the Board and will be reflected in the new CPG.

Discussion of omission of Existing CPG conditions 2 and 7 (findings 46 and 49)

The omissions in Comcast's CPG Proposal of conditions 2 and 7 of the Existing CPG to which no party objects appear to be reasonable. Accordingly, these omissions are approved by the Board and will be reflected in the new CPG.

41. One requirement of the Existing CPG that Comcast omits is a filing requirement related to house count surveys that was superseded by an amendment to Rule 8.000 in 2010. *See* Glanville reb. pf. at 12; PSB Rule 8.313(L).

Discussion of tariff filing obligations (finding 47)

Comcast notes that PSB Rule 8.311(C) relieves cable companies from the obligation to file any tariff other than its line extension tariff. It believes that condition 3 of the Existing CPG is outdated and duplicative and is no longer included in other cable operator CPGs.⁴² The Department argues that the retention of this condition will help ensure compliance with applicable Vermont law.⁴³ Although Comcast is currently required to file only its line extension tariff, the condition anticipates that there could be changes in applicable Vermont law in the future. Given the Department's support for the retention of this particular condition and the failure of Comcast to articulate any harm it would suffer from the retention of this condition, the Board concludes that the existing CPG condition should be retained in the new CPG.

Discussion of non-itemization of gross revenue tax on subscriber bills (finding 48)

There does not appear to be any remaining substantive disagreement among the parties with respect to the retention of condition 6 of the Existing CPG related to the non-itemization on subscriber bills of the gross revenue tax.⁴⁴ The new CPG will retain the existing condition in its current form.

Discussion of condition for meetings with local officials (findings 50-55)

Annual meetings with local officials in Comcast's large service area can serve an important function during the eleven-year term of a CPG by providing information to Comcast about current cable needs of local communities. Meetings with the AMOs may not suffice as local officials are likely to have somewhat different perspectives on community needs and interests than the AMOs. The Board determines that with the proposed change to condition 8 of the Existing CPG, whereby invitations to meetings will be made once a year rather than twice a year, the condition should otherwise be retained largely in its current form. Accordingly, the Board will include a condition related to meetings with local officials in a renewed CPG as follows:

On at least an annual basis, Comcast management with responsibility for Vermont operations shall invite city and town government officials in each of the cities and

42. Glanville reb. pf. at 10-11; Comcast Brief at 36; Comcast Reply Brief at 3.

43. DPS Brief at 5.

44. See footnote 33 above.

towns in its cable systems to meet for the purpose of exchanging information about community needs and the Company's plans. These meetings shall be conducted on a system-wide basis and the PEG Access Management Organization ("AMO") or AMOs serving that system shall also be invited to these meetings. For smaller systems, such meetings may be held under the auspices of a regional planning commission or other appropriate regional entity. The Company shall submit summaries of these meetings, including the recommendations made by participants and the Company's response, to participants, the Board and the Department.

Discussion of filing requirements related to Annual Report (findings 56 and 57)

The modifications to Comcast's filing requirements set forth in Comcast's CPG Proposal would somewhat reduce Comcast's filing obligations under condition 11 of the Existing CPG related to its annual reports. The parties appear to be mostly in agreement on the modifications to this condition except for one filing obligation that VAN would like to retain requiring the annual filing of a map identifying fiber runs and node locations. VAN bases its support for this requirement in part on the value of such a map to the Board in understanding the contours of Comcast's network.⁴⁵

While there is value in receiving periodic updates concerning the expansion of Comcast's fiber network in Vermont, the Board, for its own purposes, does not require an updated fiber map from Comcast each year and, based on the absence of objection from the Department about the elimination of this filing requirement, concludes that the Department does not believe that this annual filing is required to meet its needs. The Department and the Board have the requisite authority under applicable law to obtain a current map identifying the fiber runs and node locations if either has a need for such a map in the future.

Based on the foregoing, the Board adopts Comcast's proposed condition as to the filings to be included with its annual report, subject to the additional filing requirements discussed below in section VI. F. (2) and VI. F. (3) of this Order related to: (a) HD penetration and channels; and (b) the retention of the requirement to submit an annual calculation of qualifying density (the PSB Rule 8.313(B)(1) "H" factor).

45. VAN Brief at 60.

(2) PEG Access – Existing CPG Conditions 17-32 and Proposals

[30 V.S.A. § 504(b)(1) & (3); PSB Rule 8.214(B)(2);
47 U.S.C. § 546(c)(1)(A)&(D); PSB Rule 8.230(A) &(D)]

59. Comcast has the ability to provide public access, has designated adequate channel capacity and provided appropriate facilities for PEG use, and Comcast's cable system in Vermont offers a reasonably broad range of PEG programming. This finding is supported by findings 5 to 10, above, and findings 60 to 65, below; Glanville pf. at 20.

60. Comcast maintains that its systems are designed and built so that they may provide PEG access capabilities as required by PSB Rule 8.363(C) and other applicable law. Exh. CRC-2 at 5.

61. Comcast has met with all 22 AMOs designated by Adelpia and renewed PEG Agreements with all 22 AMOs. Glanville pf. at 7.

62. Comcast provides channel capacity of a minimum of one channel and in most cases three channels for the provision of PEG access programming. Comcast has designated a total of 45 forward viewable PEG channels throughout its service territory in Vermont. Tr. 7/18/16 at 23 (Glanville); exh. CRC-2 at 8 and 9.

63. Operating funding for AMOs is capped at 5% of Comcast's gross cable operating revenues. Separate capital funding requirements are outlined in individual agreements with the AMOs. Glanville reb. pf. at 31.

64. As Comcast's operating revenue from cable television services in Vermont has increased since 2007, operating funding provided to the AMOs has increased from \$3.7 million in 2007 to \$6.0 million in 2014. Capital funding to the AMOs increased from approximately \$513,000 in 2007 to \$857,000 in 2014. In 2015, more than \$7.2 million of operating and capital funding was provided to the AMOs. Glanville reb. pf. at 23 & 30; Davitian reb. pf. at 14, 29-30; exh. Comcast-4; exh. Comcast-5.

65. In 2014, the amount of operating funding provided through Comcast to each of 22 individual AMOs ranged from \$25,651 to \$975,240. Exh. Comcast-5 (last page).

66. Public, educational, and governmental access to cable television systems has been available in parts of Vermont since 1975. Prior to the adoption by Congress of the Cable Communications Policy Act of 1984 (which provided federal authorization for PEG channel

support), the Board required a cable operator to set aside and fund PEG access channels on the basis of community needs and interests and the state EMCO criteria. Davitian pf. at 9; 47 U.S.C. § 531.

67. PEG channels serve a substantial and compelling government interest in diversity, a free market of ideas, and an informed and well-educated citizenry. Congress afforded PEG channels special status in order to promote localism and diversity. Davitian pf. at 15-16; exh. LGD-4 at 89 (¶ 213).

68. More than two-thirds of the respondents to the scientific statistical survey sponsored by the Department as part of the CNA indicated that it was either very important or important for residents and community organizations to have the opportunity to create and show their own local programming through community access television. Approximately 6% of respondents indicated that this was either not important or not very important. Approximately 21% of the respondents reported that a member of their household watched public access channels at least weekly. Peterson pf. at 2; Davitian reb. pf at 16-17; exh. CP-1 (Attachment D at 6, 26, 27, 58).

69. Many participants in focus group meetings conducted by the Department indicated that they would like Comcast to do more in Vermont communities to promote the AMOs' community-based efforts. Exh. CP-1 (CNA Report at 3).

70. When asked what additional services they would like the AMOs to provide, many participants in the focus groups indicated that they would like the AMOs to have the capacity to do more of what they already do, specifically the coverage of more community meetings and events and the ability to broadcast more live programming from locations that are not currently set up for remote origination. When asked what AMO services are utilized, the two most common responses were the broadcast and archiving of public meetings and the training of students. Exh. CP-1 (CNA Report at 3).

71. The Department believes that Comcast, through its relationships with the AMOs, is meeting the cable related community needs and interests of the communities that it serves. The CNA Report also concludes that:

There appears to be a deficit of awareness in communities about the programming and services that AMOs provide, which could be addressed with increased marketing and outreach by the AMOs and assistance from Comcast with things

like specific program listings, broadcast of PEG programming in high definition, and promotion on commercial channels. There is community support for PEG programming on the Interactive Program Guide, broadcast of PEG programming in HD, and increased capacity for remote origination. However, responses from the scientific survey indicate that customers do not want to bear the costs for enhanced AMO services.

Exh. CP-1 (CNA Report at 7-8).

72. The rapidly changing nature of cable system technology and the emerging digital transition of cable video delivery services over the next eleven years will have effects on AMOs and the delivery of PEG content. As Comcast introduces and expands the use of new technology in Vermont for commercial objectives, there is a reasonable expectation that community needs and interests related to PEG access should also be served. Davitian reb. pf. at 13; Campitelli pf. at 9, 13, 24, 33; Crawford pf. at 5, 10-11, 34-35.

73. PEG access to cable network bandwidth has decreased over the past 30 years. Crawford pf. at 20 24; Davitian pf. at 16; exh. AC-18.

Comcast CPG Proposal – Reasonable PEG Access and Plan

74. Comcast's CPG Proposal includes a new condition related to the provision of reasonable PEG Access in accordance with PSB Rule 8.400 and the maintenance of a plan for such purpose. Comcast's CPG Proposal at 5-6.

75. VAN opposes this proposed condition and recommends that the Board not adopt the language as proposed by Comcast as it repeats requirements already set out in Rule 8.400. Byer pf. at 20; exh. LGD-10 (updated 9/2/16) at 5.⁴⁶

Discussion of Comcast's proposed PEG access and plan condition

Comcast does not mention this proposed condition in its prefiled testimony and has not offered evidence in support of a need for this proposed condition. VAN continues to oppose this condition because VAN rejects the need to restate the fact that Comcast is required to comply with PSB Rule 8.000 *et seq.*⁴⁷ Given the absence of support in the record for Comcast's proposed condition and VAN's objection to it, the Board has determined not to adopt this condition.

46. See, also, Chase pf. at 17 related to combining and harmonizing Comcast's proposed conditions 14 and 20 (condition 26 of the Existing CPG).

47. VAN Brief at 4.

Existing CPG Condition 17 –AMO Designation

76. Comcast's CPG Proposal retains with modifications condition 17 of the Existing CPG.⁴⁸ The modifications to the existing condition proposed by Comcast are acceptable to VAN and the Department. Byer pf. at 15; Comcast's CPG Proposal; exh. LGD-10 (updated 9/2/16); DPS Brief at 27.

Discussion of Condition on AMO Designation

There is no opposition to the modifications to the existing condition proposed by Comcast, and these modifications appear to be reasonable. Accordingly, the Board adopts the condition on AMO designation as proposed by Comcast.

Existing CPG Condition 19 – PEG Access Channel Reassignment

77. Existing CPG Condition 19 provides as follows:

19. Comcast must work with the relevant AMO prior to any PEG-access-channel reassignment and shall pay the access entity's reasonable costs of such reassignment. Comcast shall not reassign a PEG access channel without advance warning and consultation with the AMO.

Existing CPG at 6.

78. Comcast's CPG Proposal omits this condition. Comcast believes that issues related to channel reassignment are best negotiated between Comcast and the individual AMO. Comcast's CPG Proposal; Glanville reb. pf. 21-22.

79. VAN proposes to retain a condition on channel reassignment that incorporates more specific language based on precedents from other jurisdictions. VAN's proposed condition provides as follows:

48. Condition 17 of the Existing CPG provides as follows:

17. Comcast shall designate one or more AMOs as provided in Rule 8.400. Comcast shall provide levels and types of financial, operational, and technical support to those AMOs that are fair and reasonable. This condition shall not preclude Comcast from designating the same or additional AMOs than has a competitive operator in any area, nor preclude Comcast from offering different or additional public access content to its cable subscribers.

The condition in Comcast's CPG Proposal is as follows:

Comcast shall designate one or more AMOs as provided in Rule 8.400. Comcast shall provide levels and types of financial, operational, and technical support to those AMOs that are fair and reasonable and in compliance with applicable law.

Comcast shall maintain the current position of the PEG Channels on its channel lineup to the extent commercially feasible even if the basic tier channels are updated to high definition. In the event that reassignment is necessary, Comcast shall:

(a) consult with affected AMOs and provide them with a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred twenty (120) days' notice, prior to the time any Access Channel designation is changed, unless the change is required by federal law, in which case Comcast shall give the AMO the maximum notice possible;

(b) make reasonable efforts to maintain PEG Channels in consecutive channel positions (numbers) on their channel lineup; in reasonable proximity to local broadcast channels and easily accessible to subscribers;

(c) except for PEG channel relocations due to the channel designations of must carry Channels or other federal or state legal requirements, if Comcast relocates PEG Channel(s), then Comcast shall pay the affected AMO up to five thousand dollars (\$5,000) to assist in "rebranding" the PEG Channel(s). Comcast shall make such payment once for every instance in which they relocate a PEG Channel or Channels.

(d) shall cooperate in the following manner with the AMO in order to notify Subscribers of this change:

(i) at its expense, Comcast will place the AMO's notices of the Channel change on and/or with its regular monthly billings;

(ii) shall provide a minimum of Seven Thousand Dollars (\$7,000) of in-kind air time per event on advertiser supported Channels (e.g. local broadcast channels, USA, TNT, TBS, Discovery Channel, or other comparable channels) for the purpose of airing the AMOs, pre-produced thirty (30) second announcement explaining the change in location; and

(iii) Comcast shall also use its customer messaging function of its set-top unit to provide customers the new channel assignments at least 30 days prior to the change and for at least 30 days after the change.

Byer pf. at 20-25 and reb. pf. at 8-10; exh. LGD-10 (updated) at 6-7.

80. Comcast opposes VAN's proposed condition. There has only been one instance of PEG channel reassignment over the term of the existing CPGs, and that instance was related to the rebuild of the Newport system in 2010. Comcast worked with the affected AMO, negotiated a reasonable amount for costs related to the reassignment, and provided customer notification. Glanville reb. pf. at 21; Byer reb. pf. at 8-9.

81. Advance consultation with respect to PEG channel reassignment is necessary to ensure that there is a logical fit between the new channel location and the location of other local and PEG channels and that any such reassignment will not adversely affect viewers of the PEG channel in

finding PEG content. The AMOs have made investments in their current channel assignments, and AMO costs related to a reassignment will include the need to rebrand an AMO and its reassigned PEG channel. Byer pf. at 21-22.

Discussion of Channel Reassignment Condition

Comcast believes that VAN's concerns about channel reassignment are unfounded and that channel reassignment is adequately addressed in individual PEG agreements. It maintains that costs related to reassignment and promotional support related to PEG should be left to contract negotiations between Comcast and an individual AMO.⁴⁹ It claims that the conditions that VAN seeks to impose on Comcast related to channel reassignment "are not justified, excessive, and unprecedented in Vermont."⁵⁰

VAN maintains that global issues like PEG channel reassignment that affect all AMOs should not be left to individual AMO contract negotiations with Comcast. It notes that Comcast has agreed to terms similar to VAN's proposed condition on channel reassignments in at least four franchise agreements. In VAN's view, the absence of issues with PEG channel reassignment over the past 11 years does not provide a sufficient basis to exclude a PEG channel reassignment condition in the new CPG. It argues that the frequency of channel reassignment in the past has no bearing on the future, particularly as standard definition channels are phased out.⁵¹

Given the absence of issues with PEG channel reassignment to date, the Board is not inclined to adopt the detailed requirements for channel reassignment set forth in VAN's proposal. At the same time, Comcast has not provided sufficient justification for its omission of the current condition related to PEG channel reassignment. The Board believes that the current condition sets general parameters related to channel reassignment and provides some protection for AMOs and the public that might not otherwise be obtained in future contract negotiations. As such, there is value in retaining the existing condition on channel reassignment, and the new CPG will include the current condition.

49. Comcast Brief at 48-49; Comcast Reply Brief at 14; Glanville reb. pf. at 21-22.

50. Glanville reb. pf. at 22.

51. VAN Brief at 61-63; Byer reb. pf. at 8-10;

Existing CPG Conditions 20 and 21 – Statewide PEG Access Network

82. Comcast's CPG Proposal does not include conditions 20 and 21 of the Existing CPG.

These conditions provide as follows:

20. Comcast must provide a statewide PEG access channel, and this commitment may be met through the provision of interconnection bandwidth rather than as a viewable channel. At a minimum, this Network shall enable digital file sharing between AMOs and the ability for AMOs to distribute programs to Comcast subscribers in its Vermont territories. Details of this provision should be determined through negotiation or a later proceeding. Negotiations should be open to all PEG AMOs wishing to take part. Comcast shall provide the statewide network once the details for operation of the network have been decided. Comcast shall offer to interconnect, directly or indirectly, with the Vermont cable systems operated pursuant to Certificates of Public Good to exchange PEG-access programming among the companies' systems. Said interconnection shall be subject to the parties reaching acceptable commercial terms concerning ownership and apportioning the cost of any facilities necessary to interconnect Comcast's and other cable companies' networks. If the cable operators cannot reach an interconnection agreement within 120 days, Comcast shall submit all unresolved issues to the Board for resolution.

21. If the Board has designated an entity to act as a statewide PEG AMO, Comcast shall upon request of the AMO provide as minimum support for the statewide PEG network the capability of transmitting signals from the statewide network to any PEG forward channel and transmitting to the statewide network signals originating on any PEG reverse channel on the cable system. Such a request by the AMO for statewide PEG-network capability is to be made at least one year prior to activation of the statewide channel on a Comcast system. Additionally, Comcast is not obligated to pay for statewide PEG-programming content in addition to its PEG-access obligations.

Existing CPG; Comcast's CPG Proposal.

83. The Vermont Media Exchange ("VMX") was created in 2007 in connection with efforts to provide for a statewide access channel. The VMX enabled digital file sharing among the AMOs and was established following negotiations with Comcast. In order to establish the VMX, Comcast provided a one-time payment of \$75,000 from funds that had been placed in escrow by Adelphia. Chapman reb. pf. at 4; Glanville reb. pf. at 23-24; Davitian reb. pf. at 34-35; exh. DMG-14.

84. The VMX is used by Comcast's 22 AMOs to share PEG programming as well as by three AMOs designated by other cable operators in Vermont. VMX continues to provide a valued

service, is well utilized, and financially supported by all of Vermont's 25 AMOs. Glanville reb. pf. at 23-24; Chapman reb. pf. at 4.

85. As their video storage needs expand beyond VMX file sharing, the AMOs will need to increasingly rely on centralized TCP/IP networks to move PEG digital files and streaming channel content to storage and computer resources. The AMOs have been preparing for several years for a more expansive statewide connectivity than is provided by the VMX. VAN and its members have contemplated for many years that VAN would eventually form and seek designation of a statewide AMO. Chapman pf. at 39-40 and reb. pf. at 4-5; Glanville reb. pf. at 24; exh. DMG-15.

86. VAN proposes that the statewide network be built out as an institutional network or I-Net⁵² that connects PEG AMOs and local remote origination sites in order to share and transport content in an easy and affordable way. Such an I-Net would reduce the demands that the AMOs place on Comcast's hybrid fiber-optic/coaxial cable network. Chapman pf. at 4 and reb. pf. at 5; Crawford pf. at 30-31; Glanville reb. pf. at 24-25.

87. A statewide network constructed as an institutional network would provide a backbone for leveraging certain local PEG services for the future of PEG access in Vermont. The institutional network could provide significant quantities of network bandwidth, facilitate collaboration on production and post-production work, the offsite backup and archiving of content as well as the cablecast, sharing, streaming, and distribution of content to the public directly or through syndication. Campitelli pf. at 22; Chapman reb. pf. at 5; Crawford pf. at 29.

88. An institutional network as proposed by VAN could allow AMOs to share and transport video content in a feasible and affordable manner while reducing the demands the AMOs place on Comcast's hybrid fiber-optic/coaxial cable network. Crawford pf. at 31; Chapman pf. at 40-41.

52. PSB Rule 8.100(R) defines an institutional network or I Net as "a communication network that is constructed or maintained by the cable operator and that is made available to educational or governmental institutions."

47 U.S.C. §531(f) defines an institutional network as "a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers."

47 U.S.C. §531(b) provides in relevant part that the Board, as the franchising authority, "may require as part of a cable operator's proposal for a franchise renewal, subject to section 546 of this title, that . . . channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section." *See, also*, PSB Rule 8.434 related to the interconnection of cable systems throughout Vermont for purposes of transmitting PEG programming and the use of certain institutional networks.

89. VAN proposes a new condition as a replacement for conditions 20 and 21. VAN's proposed condition provides as follows:

1. *Board designates VAN to be the Statewide AMO*: Vermont Access Network will be designated as the "statewide AMO" to negotiate agreements with Comcast related to PEG Access statewide interconnectivity, including construction of statewide PEG Access network/INet.

2. *Statewide PEG Interconnect/INet*: Comcast shall, at the request of a Board designated Statewide AMO, provide PEG Access statewide interconnectivity with connectivity to other cable systems.

3. *Orders Comcast to provide statewide PEG interconnection bandwidth as described*: This commitment may be met through interconnection bandwidth, such as statewide PEG Access INet or other solutions over the course of the CPG. Comcast will provide, at minimum, a statewide PEG INet with sufficient capacity and capability to

(a) transmit signals from the statewide network to any PEG forward channel and

(b) transmit to the statewide network signals originating on any PEG reverse channel on the cable system.

4. *Negotiations*: Negotiations for provision and implementation of a statewide PEG network will take place between the Company and the Board designated statewide AMO. Details of this provision should be determined through these negotiations or a later proceeding, subject to INet conditions outlined in Docket 7077 60-65.

5. *Statewide Channel*: In the event that VAN requests a forward statewide PEG channel, Comcast will provide sufficient connectivity between AMO's to enable the transport of live and archived programming, switching of said programming, and sufficient funds for the operation of the statewide channel. The statewide channel will be presented in the highest quality channel format available on the system and its content will appear on menu systems within Comcast's array of services, including the Interactive Program Guide ("IPG") in Vermont.

Exh. LGD-10 (updated 9/2/16); VAN Brief at 69.

Discussion of Conditions related to Statewide Network

This proceeding relates to the renewal of Comcast's CPG. The Board agrees with Comcast that the designation of a statewide AMO by the Board in this Order is beyond the scope of this docket.⁵³ PSB Rule 8.425 provides a procedure by which an entity may petition the Board to be designated as an AMO to administer a statewide PEG access network. If VAN seeks such designation, it must file a separate petition that meets the requirements of the rule.

53. Comcast Reply Brief at 15.

The renewal CPGs issued to Adelphia in 2000 required Adelphia to provide a statewide PEG access channel, but left the logistical details related to the nature of the channel, its governance, and its funding for subsequent resolution through negotiation or a Board proceeding.⁵⁴ The Existing CPG similarly required Comcast to provide a statewide access channel and set forth minimum requirements for enabling digital file sharing between AMOs and the distribution of shared programs to Comcast subscribers in Vermont. Comcast contends that its role in establishing the VMX fully satisfies condition 20 of the CPG. VAN disagrees and argues that the VMX represented only the first phase in the establishment of a statewide access channel.

The Board agrees with VAN that the objectives for a statewide access channel that provides sufficient interconnection bandwidth to meet future community needs has not been fully achieved through the VMX. Accordingly, the Board will include conditions in the new CPG that largely reiterate the requirements of conditions 20 and 21 with some modifications. The condition will require Comcast to provide appropriate support and assistance for a statewide access channel in a manner to be determined through negotiations and future proceedings.⁵⁵

Many issues remain to be resolved with respect to a statewide access channel that are beyond the scope of this proceeding, including the designation of a statewide AMO, the nature of the channel, its structure, capabilities, and capacity, and the funding of the construction and operation of such a statewide channel. These issues will have to be resolved, as appropriate, through negotiations and future Board proceedings. For example, if the AMOs seek an I-NET statewide network, they will need to submit a request for proposal to Comcast pursuant to the conditions of the renewed CPG and applicable law.

The Board adopts the following conditions for the new CPG:

19. Comcast shall continue to provide interconnection bandwidth to AMOs to enable digital file sharing between AMOs and the ability for AMOs to distribute programs to Comcast subscribers in its Vermont territories. Comcast shall also

54. Docket 6101, Adelphia CPG (4/28/00) at 7 (conditions 28 & 29); Dockets 6101 & 6223, Order on Motions to Clarify, Reconsider or Amend (7/19/00) at 8.

55. The Board notes that participants in the focus groups conducted by the Department expressed support for a statewide channel. "Many voiced a desire to be able to view content from other AMOs and for a statewide channel that could feature programming from all areas of the state." Exh. CP 1 (CNA Report at 3).

provide such other appropriate support to assist in the development and operation of a statewide PEG access channel as determined through future negotiations and proceedings. Among the issues related to a statewide access channel that remain to be resolved are the designation of a statewide AMO, the nature of the channel, its structure, capabilities, and capacity, the source of funding for the construction and operation of such a statewide channel, remote origination sites for such channel, and appropriate interconnection with the cable systems of all cable operators in Vermont.

20. If the Board has designated an entity to act as a statewide PEG AMO Comcast will provide, at minimum, upon request of such AMO, a statewide PEG network with sufficient capacity and capability to (a) transmit signals from the statewide network to any PEG forward channel and (b) transmit to the statewide network signals originating on any PEG reverse channel on the cable system. Any such request for statewide PEG-network capability is to be made at least one year prior to activation of the statewide channel on a Comcast system. Comcast shall not be obligated to pay for statewide PEG-programming content beyond its PEG-access obligations.

Existing CPG Condition 22– Capacity for Live Program Origination at Local Sites

90. Each of the parties has presented its own proposal to modify condition 22 of the Existing CPG related, among other things, to remote origination sites.⁵⁶ The existing condition provides as follows:

22. Comcast shall provide fiber-optic or coaxial-cable drops, capable of two-way service and remote origination service, upon request, to every school, library, and PEG-access studio, and to at least one municipal building in every municipality in which it is obligated to provide cable service, upon request of the school, library, PEG entity or municipality. Comcast may provide the two-way service through a drop that is separate from any drop used to provide cable-television service or high-speed Internet access service to that entity. Comcast shall provide and activate each requested drop within 6 months of receiving a request from the respective school, library, AMO, or municipality, provided, however, that Comcast is able to obtain all necessary approvals and permits pursuant to Rule 3.700. This condition does not require Comcast to provide drops to buildings that are neither passed by nor located within 500 feet of cable plant unless an entity is willing to reimburse Comcast for the incremental cost of the non-standard installation. Comcast shall provide basic cable service at

56. Remote origination sites are defined in PSB Rule 8.100(GG) as “a source of PEG content that is physically some distance from, but configured to transmit signal to, the cable company headend for distribution over the cable system.” Remote origination sites are used to provide live cablecasts of PEG channel content. See PSB Rule 8.100(V).

each coaxial drop and shall provide standard installation at no charge. Upon request, Comcast shall provide an entity described in this paragraph with a non-standard installation, provided the entity pays the difference in cost between the standard and non-standard installation.

Comcast's CPG Proposal at 6-7; Chase pf. at 9-10 and reb. pf. at 6; exh. CRC-5; DPS Brief at 28; Chapman pf. at 31-33; exh. LGD-10 (updated 9/2/16); Existing CPG at 7.

91. Remote origination is the ability to transmit live video from a remote site in the community, such as a school, library, or municipal building, to a studio site. Remote origination sites allow AMOs to broadcast events such as selectboard meetings or school events live on PEG channels. Chase pf. at 7; Chapman pf. at 9-12.

92. Remote origination of live PEG programming is an important service in meeting community needs and interests. An inability to originate live programming at key community locations diminishes the value of PEG channels to local communities. Chapman pf. at 5-6, 21, and reb. pf. at 21.

93. When asked what additional services they would like the AMOs to provide, many CNA focus group participants expressed the desire for coverage of more community meetings and events and for the ability to broadcast more live programming from locations that are not currently set up for remote origination. Exh. CP-1 (CNA Report at 3).

94. Because of the introduction of services such as digital voice and high speed internet and the absence of unused channels on its system, Comcast is no longer able to transmit content from a remote site on an unused channel to be picked up by an AMO facility for processing and retransmission. For existing remote origination sites, it is now typical for Comcast to install a direct fiber or coaxial link that is separate and distinct from its residential cable plant for the purposes of providing live PEG programming to cable customers. Glanville reb. pf. at 26-27; Chase pf. at 7-8; Chapman pf. at 6-9; exh. CRC-2 at 24-25; exh. Comcast-1.

95. Comcast prepares all remote origination site installation estimates, in consultation with Comcast engineers, taking current industry trends and costs into consideration, as no two construction projects are entirely alike. Glanville reb. pf. at 52-53.

96. VAN has concerns that Comcast has re-interpreted CPG conditions related to remote origination sites and shifted the costs of providing remote origination services to schools,

libraries, and municipal buildings. VAN believes that this has impeded community sites from being provided with remote origination service capabilities. VAN also contends that Comcast's compliance with the conditions in the Existing CPG related to remote origination service has been inconsistent and that established remote origination sites have not been updated and, as a result, provide inconsistent signal quality or can no longer adequately manage the capacity required to produce and transmit live programming. Comcast disputes VAN's contentions. Chapman pf. at 7-8, 12-13, 16-24 and reb. pf. at 11-21; Campitelli pf. at 28; Glanville reb. pf. at 45-52; exh. LGD-16; exh. RC-17.

97. Comcast's CPG Proposal would likely reduce the number of locations that would be eligible to become remote origination sites through a standard installation because any such location would have to be within 500 feet of I-Net/return line designated fiber rather than within 500 feet of Comcast's larger cable plant. Chase pf. at 7-8; Chapman pf. at 30.

98. The parties' proposals and prefiled testimony anticipate that various alternative technologies may be employed to satisfy applicable CPG requirements related to providing remote origination service from eligible community sites. Comcast's CPG Proposal at 7; Chase pf. 9-10; DPS Brief at 28; Chapman pf. 14, 27-28, 31 and reb. pf. at 21.

99. The phrase "various alternative technologies" contemplates the possible use of other solutions for remote origination sites such as sending live video over the internet from the remote location to the AMO studio. Current technology permits the development of an IP-based transport system for remote origination service. Such a transport system for remote origination service has been deployed by Comcast as a pilot project in Rutland in the service area of one AMO. Chapman pf. at 14; Chase pf. at 9-10; Campitelli pf. at 28; tr. 7/18/16 at 37-38 (Glanville).

100. When a cable operator undertakes technology upgrades to its system, PSB Rule 8.363(C) requires it to consider the effect on PEG services such as remote origination.⁵⁷ Chase pf. at 8.

101. State government buildings are noticeably absent from the list of eligible remote origination sites. If an AMO has a state building in its service area in which important meetings

57. PSB Rule 8.363(C) provides:

All systems shall be designed and built so that they may provide the PEG access capabilities required by section 8.410 et seq. of this rule, or so that those capabilities may be later added without major reconstruction of the system.

take place and could benefit from a live cablecast, VAN believes it should be considered an eligible remote origination site. Chapman pf. at 27.

Discussion re Remote Origination Service Requirements

Each of the parties has its own proposal for a new condition or conditions to replace condition 22 of the Existing CPG. All the parties acknowledge the possibility of using alternative technologies to transmit video signals from eligible community sites.

Comcast believes condition 22 of the Existing CPG should be modified and updated because the condition does not reflect changes in technology that Comcast currently uses for the provision of remote origination capabilities.⁵⁸ The most significant change in Comcast's proposal would modify the circumstances under which the installation of a connection enabling remote origination service would be viewed as non-standard such that Comcast would be entitled to reimbursement of the incremental costs of such installation. Under the current condition, buildings that are passed by or located "within 500 feet of cable plant" qualify for standard installations. Under Comcast's proposal, only "buildings located within 500 aerial feet of I-Net/return line designated fiber designed for and capable of supporting the upstream transmission of live cable-casted programming" would qualify for standard installation treatment. The Department and VAN both believe that Comcast's proposal would reduce the number of eligible sites that would qualify for standard installation of remote origination service.

Comcast maintains that the term "cable plant" in the current condition is unclear and justifies its proposed modifications to the condition as clarifications that reflect changes in Comcast's technology for the provision of remote origination capabilities.⁵⁹ Although the term "cable plant" is not defined in PSB Rule 8.000 or the Existing CPG, the Board does not agree with Comcast that the term is imprecise, unclear, or subject to varying interpretations in the context of condition 22. Cable plant is plant used in the provision of cable services and includes

58. Glanville reb. pf. at 27. *See, also*, Chase pf. at 7 8.

59. Comcast Brief at 11 & 47; Comcast Reply Brief at 17; Glanville reb. pf. at 27.

both coaxial cable and fiber-optic lines. The Board observes that there are other contexts in which Comcast does not regard the term “cable plant” to be unclear or imprecise.⁶⁰

VAN argues that Comcast’s own rebuttal testimony shows that Comcast has sought to modify its obligations under condition 22 during the term of the Existing CPG by interpreting its language in a manner that reduces Comcast’s obligations under the condition.⁶¹ The evidence presented in this proceeding does at least suggest that Comcast may be making determinations as to whether a remote origination site installation qualifies for standard or non-standard installation based on the constraints of its current technology and its business practices as to what constitutes a standard versus a non-standard installation rather than pursuant to the requirements of condition 22 of the Existing CPG.

In addition, the Board has previously had the opportunity to clarify the meaning and intent of condition 22. Shortly after the issuance of the Existing CPG, the petitioner filed a motion to clarify conditions 22 and 31 of the Existing CPG and requested that the provision of remote origination service to eligible sites be subject to a cost-benefit analysis. In an Order issued on February 2, 2006, the Board concluded that the requirement to make a connection to an eligible site that enabled remote origination service was not subject to a cost-benefit analysis. The Board also stated in that Order that the remote origination service requirements under the Existing CPG were the same as those that applied to Adelphia despite the fact that the provision of a return transmission path “was no obstacle for Adelphia, but is the sticking point for [Comcast].”⁶² The

60. Comcast’s CPG Proposal includes an annual report condition that specifically adds a reference (that is not in the existing condition) to “cable plant” without further definition: “The map should depict the roads where cable plant exists and identify the proposed coordinate system of the electronic map file.” Comcast’s CPG Proposal at 5 (last sentence of Comcast’s proposed condition 8(3)). As VAN also notes, the statewide map that Comcast filed with its 2014 annual report is titled “Comcast Cable Plant Vermont 2014.” Chapman reb. pf. at 12; exh. RC 13. Mr. Chapman also quoted from a Comcast discovery response in which Mr. Glanville presented an internal definition of “cable plant” as “its proprietary facilities used in the provision of services.” Chapman reb. pf. at 12.

61. See, for example, Chapman reb. pf. at 11 & 14.

62. Docket 7077, Order re Motion to Clarify (2/2/06) at 3. In that Order, the Board quoted from finding 174 supporting the remote origination service requirements imposed on Adelphia in its Order approving the renewal of the Adelphia CPGs:

There is a need for more remote drops. True local access means the ability to provide live programming from the sites where they happen. Each access channel should have the ability to generate a live signal from areas, such as town halls and schools, within their cable territory.

(continued...)

Board also indicated that Comcast could petition for an amendment of the Existing CPG after the Adelphia acquisition was completed.⁶³ Comcast has not filed any petition to amend condition 22 during the term of the Existing CPG.

VAN's proposed condition would require Comcast to provide two-way remote origination service that is capable of upstream and downstream transmission of live cablecasted programming to every eligible site that is within 500 feet of the cable plant as part of a standard installation at no cost to the requesting entity.⁶⁴ Noting the expense and sophisticated engineering requirements of activating a remote origination site with a fiber transmitter, VAN's proposal would make Comcast responsible for installing and paying for a fiber transmitter or other equipment (for example, an IP based encoder/decoder) necessary to activate a remote origination site. VAN's proposal would also provide live origination capacity at the Vermont State House.

The Department recommends that the Board reject Comcast's proposed condition and instead include a CPG condition that is identical to a condition in the renewed CPG of Charter that was issued in 2015.⁶⁵ Under the Department's proposal, Comcast would be required to provide and maintain "a fiber optic or coaxial cable drop for the upstream origination with adequate signal quality of PEG Access programming" to any eligible site "within 500 feet of the cable plant, as reported in Comcast's annual report." Comcast could employ alternative

62. (...continued)

Adelphia has promised a live transmission drop in every school and library passed by its system as well as in at least one municipal building in every town it serves.

Docket 6101, Order of 4/28/00, at 157.

Id. at 2.

63. The Order concluded:

In summary, we did not intend to include, and will not now insert, a cost/benefit analysis in the requirements of Conditions 22 and 31. We will note, however, that Holdco is not precluded from petitioning the Board to amend Condition 22. It may be that the new circumstance of the proposed introduction of telephony over the cable system return path is sufficient to persuade the Board to modify the requirement for such wide spread remote origination capability. But we would prefer that such a petition await the acquisition of the Adelphia systems by Holdco and an exploration of possible alternative means of providing this capability.

Id. at 3.

64. Chapman pf. at 29 & 31 33; exh. LGD 10 (updated 9/2/16) at 8 11.

65. Docket 7820, Petition of The Helicon Group, L.P., d/b/a Charter Communications, for renewal of its CPG, CPG of 4/3/15 at 5 (condition 15); exh. CRC 5.

technologies of its choice to provide PEG Access origination capability with adequate signal quality at any requested location and would consult with the requesting AMO about such technologies. The requesting AMO would be responsible for the provisioning of the required modulators or transmitters/receivers.

The Board cannot support Comcast's proposed condition because it would materially modify the circumstances under which Comcast would have to provide a remote origination site connection at no cost. Technology constraints that emerge from a cable operator's provision of additional commercial services do not excuse the cable operator from meeting its obligations under its CPG nor do they allow such operator to redefine its responsibilities under the CPG. At the time a cable operator decides to upgrade or redesign its system or introduce new services, it has a responsibility to do so in a manner that does not affect its ability to meet its PEG service obligations. At minimum, a cable operator that seeks relief from the effect of a CPG condition under such circumstances has an obligation to petition the Board for a clarification or amendment to its existing CPG so that the Board can make an assessment as to the reasonableness of any modification in light of community benefits and costs.

The Board regards the live origination of programs, such as local governmental, school, and community meetings, as one of the most significant community benefits provided by PEG channels. As the Board previously found, true local access means the ability to provide live programming from the sites where they happen.⁶⁶ The provision of remote origination services by cable operators for PEG channels is consistent with the purposes of both state and federal law. Accordingly, it is important that live programming origination sites be provisioned and maintained to permit the transmission of such programming at adequate quality. At the same time, the Board, as do the parties, believes it is appropriate to allow such services to be provided through alternative technologies to the extent such alternative technologies are more cost-effective and do not impair the adequacy of the required service.

After reviewing all the parties proposals and the related evidence, the Board has determined to adopt the Department's proposed condition. The Board finds the Department's

66. Docket 6101, Order of 4/28/00, at 157.

proposal to be reasonable to meet community needs and interests after taking into account the cost of meeting such needs.

In the case of VAN's proposal, the Board believes that any decision about providing live origination capacity to the Vermont State House or other state governmental buildings should be made after, or in connection with, any designation of a statewide AMO pursuant to PSB Rule 8.425. Based on the limited information in the record, the Board finds the assignment of responsibility for required modulators or transmitters/receivers under the Department's proposal to be reasonable (although costs to the AMOs should be taken into consideration in any decision regarding the appropriate technology to provide the necessary site connection).⁶⁷ Finally, the Board recognizes that VAN regards downstream transmission capacity at community sites to be a valuable aspect of remote origination service. However, the Board views such downstream transmission capabilities as a less essential community need than the provision of live upstream transmission capabilities. The Board would not want to eliminate the possible use of an alternative technology that provides live upstream programming from community sites on PEG channels of good quality solely for the reason that it does not allow for downstream transmission from the PEG channel studio to such community site.

The condition recommended by the Department,⁶⁸ and adopted by the Board in this Order, provides as follows:

Comcast shall provide a cable service drop at its expense to every school, library, and PEG Access studio and to at least one municipal building in every municipality in which it is obligated to provide service, upon request of the school, library, PEG entity or municipality. Comcast shall provide one service drop providing basic cable television at each such location. The installation and basic service required by this Condition shall be without charge, subject to applicable law.

Comcast shall also provide and maintain, upon the written request from the designated AMO and subject to applicable law, a fiber optic or coaxial cable drop for the upstream origination with adequate signal quality of PEG Access

67. As the Board has previously indicated and VAN does not dispute, condition 22 requires Comcast to provide a connection at a qualifying site that allows for remote origination service, but does not require Comcast install any video equipment that may be necessary at the site. Docket 7077, Order on Motion to Clarify (2/2/06) at 3 and Docket 7077, Order of 12/29/05 at 27.

68. DPS Brief at 28; *see, also*, exh. CRC 5 at 5 (condition 15).

programming at any such school, library, PEG studio, municipal building, or other public building. Subject to applicable law, Comcast shall be responsible for the construction costs to such PEG Access origination sites. The AMO requesting such a PEG Access programming origination drop shall be responsible for the provisioning of the required modulators or transmitters/receivers. Comcast may employ various alternative technologies of its choice to provide PEG Access origination capability with adequate signal quality at any requested location, and will consult with the designated AMO concerning the technologies for such PEG Access programming origination drops.

This condition does not require Comcast to provide drops for basic cable service or PEG Access programming origination to buildings that are neither passed by nor located within 500 feet of the cable plant, as reported in Comcast's annual report, unless the AMO is willing to pay Comcast the incremental cost of labor and materials beyond 500 feet in advance.

Existing CPG Condition 23 – PEG Outreach Requirements; Program Guide

102. Comcast's CPG Proposal omits and modifies certain PEG access outreach requirements that are set forth in condition 23 of the Existing CPG. Condition 23 of the Existing CPG currently provides as follows:

23. At a minimum, Comcast must provide the following PEG access outreach:

(1) fund semi-annual, quarter-page advertising in local newspapers promoting PEG access programming and functions and assist AMOs in placing their channel programming in a local newspaper's television listing grid where such a listing is feasible;

(2) provide on-screen advertising and promotion of the PEG access channel programming and facilities; provide at least 1 gigabyte GB of space on the Company's [cable-modem-service] server for each PEG access channel for purposes including, but not limited to, posting program listings, information about scheduling the use of the studio production facilities, post-production editing facilities, training, and scheduling time slots for airing programs on the public access channels; and links to local PEG access web sites related to programs on the channel; and

(3) allow PEG access groups to access Comcast's electronic programming guide and pay the fee so that the groups can have their schedules listed on that channel.

Comcast shall respond to reasonable requests by AMOs to communicate with Comcast's subscribers. Any direct costs incurred by the Company due to such communications that are over and above those normally incurred by the Company shall be borne by the requesting AMO.

Comcast proposes to eliminate requirement 23(3) related to the listing of PEG channel schedules on an electronic programming guide and the requirement that Comcast respond to reasonable requests by the AMOs to communicate with Comcast's subscribers. It also omits or modifies other outreach requirements of condition 23. Comcast's CPG Proposal; Existing CPG at 7-8. *PEG Outreach requirement (3) PEG Channel Access to Programming Guide*

103. Condition 23 of the Existing CPG requires that at a minimum Comcast must "allow PEG access groups to access Comcast's electronic programming guide and pay the fee so that the groups can have their schedules listed on that channel." Condition 23(3) is one of the PEG access outreach requirements that are designed to increase community awareness of PEG channel programming. Existing CPG at 8;⁶⁹ Chase pf. at 10.

104. VAN maintains that Comcast is not in compliance with condition 23 and other conditions of the Existing CPG because of the actions it has taken or failed to take with respect to condition 23 of the Existing CPG and with Comcast's interactive programming guide. Mobley pf. at 13; Campitelli pf. at 5-6 & 25; Davitian pf. at 8.

105. For several years, Comcast's customers have not been able to view program schedules on an on-screen programming guide for any of 45 PEG channels carried by Comcast. Schedule information for programs on non-PEG channels is available on Comcast's programming guide. In the case of PEG channels, Comcast's programming guide indicates the type of programming that is on each PEG channel (public, governmental, or educational), but does not provide any program-specific information. Comcast has been directing subscribers who call asking for PEG programming information to AMO websites. Mobley pf. at 9, 11 and reb. pf. at 10; Glanville reb. pf. at 39; tr. (7/14/16) at 15-17 (Glanville); exh. CRC-2 at 9 & 18.

106. After the Existing CPG was issued in 2005, Comcast ensured that programming information for PEG and other channels was provided on the TV Guide Channel for a number of years. The TV Guide Channel no longer exists in the format that it did when the Existing CPG was issued. Glanville reb. pf. at 39; Chase pf. at 10-11; Mobley pf. at 7; exh. LGD-11 at 2.

69. The Docket 7739 CPG issued in 2008 contains the identical requirement in Condition 24(3). The Docket 7077 CPG has been amended three times since its issuance in 2005, most recently on April 19, 2010, without any change or request for a change in the terms of this condition.

107. As part of Comcast's digital network enhancement project commenced in 2010, Comcast's interactive programming guide replaced the TV Guide channel as the means by which information is presented to subscribers about upcoming programming. Mobley pf. at 7 & 13; Campitelli pf. at 26; Glanville pf. at 8; exh. CRC-8 (significant events sections of 2009 and 2010 annual reports).

108. Comcast's interactive programming guide ("IPG") provides access to detailed programming information and closed-captioning information, and allows for recording of programming through the interactive features of the IPG. Subscribers to Comcast's X1 entertainment system may now use: a single search function for live television, on-demand video content, and digitally recorded video content; a talking guide for visually impaired users; and a voice-activated remote. Glanville pf. at 8; Mobley pf. at 10.

109. The IPG is programmed either at a national level, a regional level, or a headend level. AMO service areas do not align with Comcast's headend territories as Comcast has eight headend territories and 22 designated AMOs in Vermont. The current design of Comcast's system means that all customers served by the same cable headend receive the same programming information on the IPG. If a channel is distributed to some, but not all communities served by a particular headend, as is the case for the PEG channels, then no program-specific information is provided on the IPG. Glanville reb. pf. at 41; Chase pf. at 11-12; exh. CRC-6 & 7.

110. The unavailability of program schedules for PEG channels on an electronic programming guide is the result of Comcast's system design choices related to programming guides. Since Comcast began its digital network enhancement project, Vermont AMOs have sought access to the IPG in contract negotiations without success. Comcast representatives have stated that this issue cannot be solved in contract negotiations and would have to be resolved at the state level. Mobley pf. at 9-11 and reb. pf. at 10; Davitian pf. at 8 & 11; Campitelli pf. at 25; exh. LGD-13 at 2.

111. In order for program-specific information for PEG channels to be included on Comcast's IPG, Comcast has determined, through its engineering specialists, that modifications to its headend facilities would be necessary that would involve the purchase, installation, and

programming of specific equipment with the channel lineup of each AMO served by a particular headend. Glanville reb. pf. at 39-40.

112. Comcast estimates that the upfront cost of equipment to make access to the IPG available to the PEG channels of the 22 designated AMOs would exceed \$3.0 million and would also involve some increase in annual operating costs. Glanville reb. pf. at 40-41; tr. (7/18/16) at 54 (Glanville).

113. The ability of Comcast to provide program-specific information about all PEG channels on the IPG would also depend on each AMO providing accurate information about its program schedules to Comcast. Glanville reb. pf. at 40.

114. The Department's CNA indicated that "there was widespread support among virtually all respondents for placing PEG listings on the IPG." Most participants in the Department's focus groups believe that "detailed program listings would bring awareness of the programs to Comcast customers who are not currently aware of the programming available and could result in increased viewership." When asked what Comcast could do to increase awareness of PEG programming and services, the top three responses by a significant margin in the CNA's statistical survey were to put the schedule on Comcast's on-screen guide (50.7%), to create more partnerships with community organizations (49.2%), and to advertise the channel more (46.1%). Peterson pf. at 4; Chase pf at 10; Davitian reb. pf. at 18-19; exh. CP-1 (CNA Report at 4, 6, 8, and Attachment D at 43).

115. Among respondents to the CNA statistical survey, 60% said they used the interactive programming guide, and 78.5% wanted the option to see PEG programming on the IPG. Exh. CP-1 (Attachment D at 17 and 32).

Discussion of PEG access to programming guide PEG outreach condition 23(3)

Comcast proposes to omit condition 23(3) from the renewal CPG.⁷⁰ The Department proposes to allow an AMO to place scheduling information for a PEG channel on the IPG if there is no channel number conflict between such PEG channel and any other PEG channel in the

70. See proposed condition 19 of Comcast's CPG Proposal at 7.

applicable headend territory.⁷¹ VAN's proposed outreach condition would allow all PEG channels access to the IPG and other available menu systems. VAN also proposes a separate new condition related to the IPG and other menu systems.⁷²

The requirement that PEG channel schedules be listed on an electronic programming guide is, in the Board's view, the most important PEG channel outreach requirement in the Existing CPG. Given the widespread presence of on-screen programming guides on the cable systems of Comcast and other cable operators and the proliferation of channel options on cable systems, it is apparent that cable television customers now rely on the program-specific information presented on such guides as one of their primary sources to find information about programs of interest to watch and it is likely that program providers for all cable television channels rely on such listings to help reach their potential audience. The Department's CNA report supports the conclusion that providing PEG channel program listings on an on-screen programming guide would increase customer awareness of PEG programs.⁷³

At the time Comcast decided to replace the existing electronic programming guide with the IPG, it appears that Comcast did not give adequate consideration to the effects this would have on a material PEG outreach service requirement of its existing CPGs and on how such effects might be ameliorated.⁷⁴ Nor did Comcast petition the Board for appropriate amendments to its existing CPGs so that the Board could make a determination about the reasonableness of such proposed amendments to the CPG.

71. DPS Brief at 28 (proposed condition 4).

72. See exh. LGD 10 (updated 9/2/16) at 11 & 38 39. VAN's proposed separate new condition would provide as follows:

If channels are selected through menu systems within Comcast's array of services, such as Comcast's Interactive Program Guide and X1 operating system, the PEG access channels shall be presented in the same manner as other channels, and with equivalent programming information and features, such as DVR, talking guide capability, and access via voice activated remote control, or related features in the future. To the extent that any menu system is controlled by a third party, Comcast shall ensure that the Company will provide PEG listings on that menu system, if programming information is provided by the AMOs.

Exh. LGD 10 (updated 9/2/16) at 38 39.

73. See, also, Docket 6101, Order of 4/28/00 at 163 (finding 194): to help increase awareness of PEG programming, program schedule to be included on the electronic guide rather than the mere statement that the channel contains PEG programming.

74. See, also, VAN Reply Brief at 13.

Under the circumstances, the Board cannot support Comcast's proposed omission of requirement (3) of condition 23 of the Existing CPG. The Department's alternative proposal is opposed by both VAN and Comcast. VAN notes that the Department's proposal will have little impact as it will affect only three of the 22 designated AMOs.⁷⁵ The Board agrees with VAN about the limited usefulness of the Department's proposal, particularly in view of the finding that none of the 45 PEG channels have had their program schedules listed on an electronic programming guide for several years.

Based on the foregoing, the Board is unable to conclude that Comcast has substantially complied with the requirements of condition 23(3) of the Existing CPG, which is a material term of its CPG. For several years, Comcast has not had an electronic programming guide on its systems that lists the program schedules for any of the 45 PEG access channels carried by Comcast as required by its existing CPGs. Given Comcast's apparent failure to comply with requirement (3) of condition 23 of the Existing CPG in any respect for several years, the Board will, as a condition of CPG renewal, require Comcast, at its expense to bring its system into compliance with its pre-existing obligations. Accordingly, Comcast shall be required to make such modifications to its facilities as are necessary to enable Comcast's interactive programming guide to provide program-specific scheduling information for all PEG access channels carried on its systems in Vermont. Comcast shall complete the necessary modifications within one year from today.

The Board does not view the cost of such a condition as unduly burdensome for Comcast under the circumstances. The testimony about the total costs that would be incurred during the term of a new CPG to allow program schedule listings for all PEG channels on the IPG is somewhat confusing and difficult to fully reconcile, except for the fact that such cost is expected to exceed \$3.0 million over the term of such CPG. Beyond that, it is not completely clear from the record what the total amounts of upfront costs and continuing operating costs over the term of

75. VAN Reply Brief at 14. These three AMOs serve the communities of Woodstock, Newport, and White River Junction. *Id.*

CPG would be to enable the listing of program schedules for the PEG channels on the IPG.⁷⁶ Based on the technical hearing testimony, it would appear that the total costs during the CPG term would only be slightly in excess of \$3.0 million (almost all of which would be incurred for equipment and labor to make necessary modifications to headend and hub facilities), while the prefiled testimony appears to suggest total costs of up to \$3.8 million. However, even assuming total costs of \$4.0 million, the amortized annual cost to Comcast over the term of the new CPG would be less than \$365,000.⁷⁷ Given the profitability of Comcast's cable business in Vermont relative to this annual cost (net income of \$51.2 million in 2014), the imposition of this cost on Comcast as a condition of its CPG renewal (in light of its apparent compliance failure) is reasonable and will not impair Comcast's ability to provide cable services, to fulfill its obligations under its CPG and applicable law, or to operate profitably in Vermont.

VAN's proposed condition would require Comcast to place PEG channels on the IPG with equivalent programming information and features as commercial cable television channels, such as digital video recording, talking guide capability, and access via voice activated remote control. VAN maintains that Comcast cannot discriminate against the PEG channels with respect to the functionality, signal quality, and features provided for other channels carried by Comcast.

The Board believes the most important requirement in terms of community needs and interests is to ensure that program schedules for all PEG channel are included on the IPG. Based on the evidence in the record, the Board is not prepared at this time to require that all features of the IPG that are available to Comcast subscribers for commercial channels also be made available for PEG channels on an equivalent basis. It might be that some or all these features of the IPG will become available to the PEG channels automatically just by having their program schedules listed on the IPG. For example, it appears that there is existing functionality with respect to the digital video recording of PEG programs from the IPG even without PEG channel program

76. See Glanville reb. pf. at 40-41 and tr. (7/18/16) at 54 (Glanville). See, also, VAN Reply Brief at 14 and Comcast Reply Brief at 23.

77. A VAN witness suggests that the period over which to consider the annual amortized cost to Comcast should include the period of years during which Comcast denied the PEG channels access to the IPG. Mobley pf. at 13.

schedules on the IPG, and this functionality will become more meaningful once program-specific information for the PEG channels is available on the IPG.⁷⁸

Finally, it is important to emphasize that the AMOs will share responsibility with Comcast for ensuring accurate information about PEG programming appears on the IPG. To the extent that the AMOs fail to provide their program schedules to Comcast, the requirement adopted by the Board in this Order will not be effective in helping to meet the community need for increased awareness of PEG programs and channels.⁷⁹

Other PEG Outreach Requirements in Condition 23

116. In addition to omitting existing PEG outreach requirement 23(3) related to access to a programming guide, Comcast's CPG Proposal (a) changes the existing requirement of 23(2) that Comcast provide "on-screen advertising and promotion of the PEG access channel programming and facilities" and replaces it with a requirement that Comcast will "if requested, provide AMOs with procedures, including costs, associated therewith for placement of AMO advertising on cable networks," (b) omits the requirement that "Comcast shall respond to reasonable requests by AMOs to communicate with Comcast's subscribers," (c) omits a requirement of condition 23(1) that directs Comcast "to assist AMOs in placing their channel programming in a local newspaper's television listing grid where such a listing is feasible," (d) modifies a requirement of condition 23(1) as it relates to the funding of newspaper advertising such that Comcast would "if requested, provide reimbursement" for such advertising, and (e) omits the existing requirement of 23(2) related to provision of one gigabyte of storage space on Comcast's server for each PEG channel. Glanville reb. pf. at 28-29; Comcast's CPG Proposal at 7.

117. VAN views the omission of several means of outreach support in Comcast's CPG Proposal as a substantive change. VAN opposes most of these omissions as it will lessen the outreach support to help promote PEG channels that Comcast is currently obligated to provide. VAN believes Comcast should be required to provide in a renewed CPG at least what it is required to provide as PEG outreach support under the Existing CPG. Byer pf. at 25-26.

78. Tr. 7/18/16 at 17 19 (Glanville).

79. The record suggests that, during part of the period program schedules were still able to be listed on an electronic programming guide, many AMOs did not communicate program schedule information to Comcast for inclusion on the guide. See exh. LGD 11 at 2.

118. VAN proposes to retain the existing condition with modifications to some of the requirements. Other than its proposal to expressly provide for PEG access to the IPG that is discussed above, VAN proposes to make no modifications to the existing condition except to omit the gigabyte storage space requirement and to make certain changes in the organization and format of the condition. VAN believes that the PEG access outreach support requirements set forth in the existing condition are sufficient with only the modifications VAN proposes. Byer pf. at 25-27; exh. LGD-10 (updated 9/2/16).

119. Although Comcast views the benefit as underutilized, Comcast is willing to continue to provide reimbursement for up to two quarter-page newspaper advertisements per calendar year for the purposes of promoting PEG access programming and functions. Over a nine-year period, Comcast received 83 requests from 14 AMOs related to the funding of newspaper advertising for PEG access. Glanville reb. pf. at 28.

120. Comcast opposes the continuation of a CPG requirement that Comcast must assist AMOs in placing advertising in the television listing grid of local newspapers. During the past ten years, Comcast has not received any requests from AMOs for assistance in placing their program listings in local newspapers, nor have any AMOs informed Comcast of difficulties in placing their listings in local newspapers. Comcast believes the condition proposed by VAN is outdated and unnecessary, especially in an era where there is less reliance on print media for obtaining information about program listings. Glanville reb. pf. at 29.

121. Comcast opposes continuing the requirement of the Existing CPG that Comcast respond to reasonable requests by AMOs to communicate with Comcast's subscribers. Some AMOs have expressed a desire for the ability to communicate directly with Comcast customers, either through bill statement inserts or messages. In such instances, Comcast has discussed this with the AMOs and addressed it in the PEG access agreements with the AMOs. Comcast does not believe there should be a general requirement in the CPG related to such communication requests as such support is best negotiated with individual AMOs. Glanville reb. pf. at 29.

122. VAN opposes any removal of PEG conditions from the existing CPGs that is justified on the basis that such matters should be negotiated in individual AMO contracts. In VAN's view, it would be too burdensome to place such responsibility on each individual AMO with respect to

issues that can be resolved collectively during the CPG process. VAN believes that it is necessary to have basic guidelines included in the CPG to set parameters for Comcast's assistance for PEG outreach with the specific details then to be discussed between an AMO and Comcast. Byer reb. pf. at 10; Davitian pf. at 14-15.

123. Approximately 46% of the respondents to the scientific survey conducted as part of the CNA suggested that Comcast advertise the PEG channels to make the community more aware of the programming and services offered by the AMOs. Participants in the CNA focus groups suggested that AMO programming and services could be advertised on commercial stations. The CNA Report also stated that the Department received comments as part of its online, non-scientific survey that Comcast could support AMOs through the promotion of PEG programming on commercial stations. Exh. CP-1 (CNA Report at 4, 5, 6 and Attachment D at 43).

Discussion re other PEG outreach requirements

Largely for the reasons stated by Comcast, the Board concludes that it is no longer necessary to include a provision requiring Comcast to assist AMOs in placing their program schedules in newspaper's television listing grids. It also determines that the elimination of the gigabyte storage space requirement, supported by both Comcast and VAN, is appropriate. However, in view of the need to increase public awareness of PEG programming and services, the Board determines that the other outreach requirements in condition 23 of the Existing CPG should be continued in a renewal CPG.

Based on all the foregoing findings and discussions regarding condition 23 of the Existing CPG and the parties' proposals, the Board will include the following condition related to PEG access outreach in a renewed CPG:

23. At a minimum, Comcast must provide the following PEG access outreach:

- (1) fund semi-annual, quarter-page advertising in local newspapers promoting PEG access programming and functions;
- (2) provide on-screen advertising and promotion of PEG access channel programming and facilities;
- (3) make such modifications to its facilities, at its expense, as are necessary to allow AMOs to access Comcast's interactive programming guide so that all PEG channels designated by Comcast are able to have their schedules listed on the interactive programming guide (or any successor on-screen programming guide).

All such modifications shall be completed no later than one year from the date of this Certificate; and

(4) respond to reasonable requests by AMOs to communicate with Comcast's subscribers. Any direct costs incurred by the Company due to such communications that are over and above those normally incurred by the Company shall be borne by the requesting AMO.

Existing CPG Condition 24 – Capital Funding

124. Comcast's CPG Proposal omits condition 24 of the Existing CPG. The existing condition provides as follows:

24. Comcast and each AMO shall reevaluate the digital equipment needs or other PEG access related cable system improvements at least twice during the term of this Certificate. Comcast shall provide additional capital funding for each such re-evaluation or upgrade based upon the criteria of Rule 8.405. If an agreement cannot be reached, the Board will exercise its authority under 30 V.S.A. § 509(a) or Rule 8.405(e) and open an investigation to consider the necessity and amount of the interim upgrade payments.

Comcast's CPG Proposal; Existing CPG at 8.

125. The existing condition is based on the assumption that, over the course of an eleven-year term CPG, cable distribution and video production technology will likely change significantly enough to warrant a process for AMOs to ask for additional funding for capital expenditures, commonly referred to as a "spike funding request." Chapman pf. at 56-57.

126. The cable and telecommunications industries operate within a rapidly changing technological environment, and the methods of video distribution and production will likely change dramatically over the next eleven years. VAN believes that the ability of the AMOs to request additional capital funding, within the guidelines provided in PSB Rule 8.405, enables AMOs to respond to cable-related community needs promptly and effectively. Campitelli pf. at 8-13 & 24.

127. VAN proposes to retain and modify the existing condition. Chapman pf. at 55-56; Campitelli pf. at 5; exh. LGD-10 (updated 9/2/16) at 11-12.

128. VAN's modified proposal is designed to specify the commitment of Comcast to provide additional capital funding. It would require Comcast to set aside an additional capital fund with a value equivalent to 0.5% of subscriber revenue in the fifth and ninth year of the CPG. Chapman pf at 56-57; exh. LGD-10 (updated 9/2/16) at 11-12.

129. VAN's proposed modification to the existing condition is based on AMO contracts with Burlington Telecom. VAN suggests that the greater specificity in its proposal, relative to the existing CPG condition, might be helpful to Comcast in reducing uncertainty as to its additional capital funding requirements during the term of the CPG. Chapman pf. at 55-57; Campitelli pf. at 5 & 24.

130. VAN maintains that Comcast has sought to limit the ability of AMOs to make an additional capital funding request in PEG access contracts with the AMOs despite PSB Rule 8.417(E).⁸⁰

131. Comcast opposes both the retention of the existing condition and VAN's proposed modifications to this condition, including the establishment of an additional capital fund. Comcast believes that the spike funding condition from the Existing CPG is no longer necessary. It maintains that the existing condition, which was carried over from Adelphia's Docket 6101 CPGs, was in place solely to address the broadcast digital transition which occurred in 2009. Glanville reb. pf. at 31.

132. Comcast believes all capital costs should be identified and budgeted for when AMO PEG access contracts are negotiated. If unanticipated capital costs develop, they should be covered through responsible budgeting by the AMO. Glanville reb. pf. at 31.

133. VAN also proposes a new CPG condition related to capital funding based on PSB Rule 8.417(D). The new condition would provide as follows:

If requested by an AMO, and subject to applicable law, Comcast shall provide, pursuant to a negotiated contract agreement with the AMOs, reasonable capital funding as required by PSB Rule 8.417(D).

Chapman pf. at 59; exh. LGD-10 (updated 9/2/16) at 42.

134. While annual capital funding is enabled by PSB Rule 8.417(D), similar to operating funding under PSB Rule 8.417(C), VAN believes it is important to spell out overall PEG funding obligations in the CPG. Chapman pf. at 59.

80. PSB Rule 8.417 pertains to AMO funding, and PSB Rule 8.417(E) provides as follows:

(E) Other payments. New and existing AMOs, as part of PEG access contract negotiations, may negotiate for in kind contributions or certain lump sum amounts to be paid by the operator for start up operating and start up capital funds, annual capital funds, and other capital improvements under certain conditions or at certain times during the term of the certificate of public good.

135. Comcast opposes VAN's proposed new CPG condition regarding PSB Rule 8.417(D) capital funding as unnecessary. Glanville reb. pf. at 30-31.

Discussion re capital funding conditions

Given the pace of technological change in the methods of production and distribution of video content for cable television systems, the Board believes it is appropriate to retain the condition on "spike funding" from the Existing CPG in the new CPG. However, in light of Comcast's objection to the modifications of the existing condition proposed by VAN and uncertainty as to the effect these modifications would have, the Board will not adopt VAN's proposed modifications to the existing condition.

Comcast opposes VAN's new condition on capital funding on the basis that it is unnecessary and already addressed in Board rules, including PSB Rule 8.417(D), and federal law.⁸¹ Comcast believes there is no need to restate or summarize a Board rule in the renewal CPG.⁸²

Based on its testimony and briefs, it does not appear that Comcast has any substantive objection to the inclusion of VAN's proposed new condition in the renewal CPG. As Comcast notes, the proposed new condition basically summarizes existing PSB rule requirements related to capital funding requests. Given the Board's decision to retain the existing condition related to spike funding, it seems reasonable to also spell out general obligations related to capital funding in the CPG. However, the Board does not believe the phrase "as required by PSB Rule 8.417(D)" at the end of the proposed condition is the appropriate formulation under Board rules and will change this phrase to "pursuant to PSB Rules 8.417(D) and 8.405." Accordingly, the Board will include the following condition in a renewal CPG:

If requested by an AMO, and subject to applicable law, Comcast shall provide, pursuant to a negotiated contract agreement with the AMOs, reasonable capital funding pursuant to PSB Rules 8.417(D) and 8.405.

Comcast and each AMO shall reevaluate the digital equipment needs or other PEG access related cable system improvements at least twice during the term of this Certificate. Comcast shall provide additional capital funding for each such re-evaluation or upgrade based upon the criteria of Rule 8.405. If an agreement

81. Comcast Brief at 44-45.

82. Comcast Reply Brief at 25.

cannot be reached, the Board will exercise its authority under Title 30 or Rule 8.405(E) and open an investigation to consider the necessity and amount of the interim upgrade payments.

Existing CPG Condition 25 – Simultaneous Live Programs

136. Comcast's CPG Proposal omits condition 25 of the Existing CPG. The existing condition provides as follows:

25. Comcast shall provide AMOs the ability to originate as many simultaneous live PEG programs on any part of its system as there are forward PEG channels on that part of the system. Comcast shall not be obligated to originate any quantity of simultaneous, system-wide broadcasts that exceeds the number of forward PEG channels activated in that part of the system with the smallest quantity of activated forward PEG channels.

Comcast's CPG Proposal; Existing CPG at 8.

137. VAN proposes to retain this condition in its current form in the renewal CPG. Chapman pf. at 14-15; exh. LGD-10 (updated 9/2/16) at 12 & 22.

138. It is important for local communities to be able to present two live programs, such as a selectboard meeting and a school event, on the same evening. This capacity is not currently available to all Vermont AMOs. Chapman pf. at 14-15; Davitian pf. at 20; exh. LGD-2 at 22.

Discussion of condition requiring capacity for simultaneous live PEG programs

In its reply brief, Comcast states that it has not been contacted by any AMO about the inability to provide simultaneous live programming and that the "anecdotal, unsupported claims by VAN are not evidence of an actual issue."⁸³ It also states that Comcast does not believe the condition is necessary because Comcast has an ongoing procedure to work with AMOs on issues related to simultaneous live programming.⁸⁴

Evidence in the record indicates that some AMOs still do not have the ability to originate simultaneous live programming. In any event, the existence of an ongoing procedure to work on any issues does not make the condition unnecessary. The Board finds the existing condition to be

83. Comcast Reply Brief at 19.

84. Comcast Reply Brief at 19. *See, also*, tr. 7/18/16 at 29-30 (Glanville).

reasonable in light of community needs and interests and will retain this condition in a renewal CPG.

Existing CPG Condition 26 – Plan for Reasonable Public Access

139. Comcast's CPG Proposal modifies condition 26 of the Existing CPG related to a public access plan. Comcast's proposed condition provides as follows:

The Company shall keep a current PEG Access Report on file with the Board. As allowed by Rule 8.420, Comcast may delegate to one or more AMOs the task of preparing PEG access Plans.

Glanville reb. pf. at 20; Comcast's CPG Proposal at 7; Existing CPG at 8.

Discussion of condition related to PEG access plans

There were some disagreements between VAN and Comcast about the language of this condition over the course of this proceeding.⁸⁵ However, in its brief, VAN expresses support for the condition as proposed by Comcast.⁸⁶ The Board finds the modified condition as proposed by Comcast to be reasonable, and will include it in a renewal CPG.

Existing CPG Condition 27 – AMO Operating Funding

140. Comcast's CPG Proposal would retain condition 27 of the Existing CPG with some modifications, including a proposed change in the interest rate due from Comcast on unpaid balances from the Vermont legal rate to the prime lending rate. Comcast's CPG Proposal at 7-8; Existing CPG at 8-9.

141. VAN agrees to the condition with the modifications proposed by Comcast except for the proposed change in the applicable interest rate from the Vermont legal rate to the prime lending rate. Chapman pf. at 58; exh. LGD-10 (updated 9/2/16) at 12-13.

142. A failure by Comcast to convey operating funds to AMOs on a timely basis poses risks to AMOs, especially if an AMO does not have the resources to continue to fund its operations while awaiting payment. VAN is concerned that establishing the applicable interest rate on unpaid balances at the prime lending rate will not have the same deterrent effect as the current provision. Chapman pf. at 58.

85. See, e.g., Byer reb pf at 6 8.

86. VAN Brief at 55.

Discussion re Proposed Condition and Applicable Interest Rate on Unpaid Balances

The only disagreement among the parties about this condition concerns the interest rate that should apply to unpaid balances. Comcast proposes to change the applicable interest rate in the condition to the prime lending rate, while VAN opposes this change.

Comcast notes in its reply brief that there is no evidence of any late payment by Comcast and suggests that the rate in the existing condition is unduly high and punitive.⁸⁷ In its brief, VAN notes that, if an AMO needed to obtain a loan from a financial institution or other source (assuming such funding was available to it on a timely basis) because of an unpaid balance or delayed payment, the AMO would likely have to pay an interest rate in excess of the prime rate and would also incur other fees.⁸⁸

The Board has previously found the applicable interest rate in the existing condition to be reasonable in light of community needs and interests. Comcast has not presented sufficient evidence in this proceeding as to why a proposed change to the applicable interest rate in the existing condition would now be reasonable. The Board finds the other modifications to the condition to be reasonable. Accordingly, the Board will include the following condition in a renewal CPG:

Board Rule 8.400 shall apply to Comcast, to any AMO with which Comcast may designate and contract, and to any organizations that seek Comcast's designation as an AMO. Comcast shall comply with Rule 8.400 as may be amended from time to time. Total operating funding within each system served by one or more AMOs shall not exceed 5% of the Company's annual gross revenues earned in that cable system to provide cable service in Vermont. Unpaid balances owed by the Company shall earn interest at the legal rate (see 9 V.S.A. § 41a), commencing the day after the due date.

Existing CPG Condition 28 – PEG Policies and Procedures

143. Comcast's CPG Proposal makes some modifications to condition 28 of the Existing CPG. Neither VAN nor the Department has any objection to Comcast's proposed modifications to the existing condition. Comcast's CPG Proposal at 8; exh. LGD-10 (updated 9/2/16) at 13; DPS Brief at 27; Existing CPG at 9.

87. Comcast Reply Brief at 19.

88. VAN Brief at 82.

Discussion re condition on PEG policies and procedures

The Board finds the condition as proposed by Comcast to be reasonable and will include it in a renewal CPG.

Existing CPG Condition 29 – Meetings with AMOs’ Governing Boards

144. Comcast’s CPG Proposal makes a modification to condition 29 of the Existing CPG such that meetings with an AMO’s governing board would occur upon request of an AMO rather than being required on at least an annual basis. Neither VAN nor the Department has any objection to Comcast’s proposed modifications to the existing condition. Comcast’s CPG Proposal at 8; Existing CPG at 9; exh. LGD-10 (updated 9/2/16) at 13; DPS Brief at 27.

Discussion re condition on meetings with AMOs’ governing boards

The Board finds the condition as proposed by Comcast to be reasonable and will include it in a renewal CPG.

Existing CPG Condition 30 – Outreach to Municipalities, Schools, and Libraries

145. Comcast’s CPG Proposal omits condition 30 of the Existing CPG which relates to Comcast’s obligations to reach out to municipalities, schools and libraries. The existing condition provides as follows:

30. At least annually, Comcast shall request to meet with the statewide advisory board constituted under Paragraph 7. Comcast shall, on an annual basis, inform every municipality, school, library and AMO in every system subject to this Certificate of the opportunity to have two-way capable drops placed at the locations described in Paragraph 20 and offer to meet to: (1) determine each entity’s need for two-way capable drops; (2) in the case of municipalities, discuss the location(s) of such drop feed points within each municipality; and (3) negotiate the specific arrangements necessary for installation and maintenance of such drops. If requested by the qualifying entity, at least one two-way capable drop shall be installed at that entity’s premises as soon as practicable, but not more than 6 months after receiving a request from the respective school, library, AMO or municipality, provided, however, that Comcast is able to obtain all necessary approvals and permits pursuant to Rule 3.700. Comcast’s obligation to install a two-way capable drop in response to a request from an eligible entity shall be ongoing. Comcast shall submit with its Annual Report to the Board and the Department a status report of the installation of two-way capable drops, including the status of negotiations with the municipalities, schools, libraries and AMOs with respect to such installation.

Comcast’s CPG Proposal; Existing CPG at 9-10.

146. VAN proposes to retain the existing condition with some changes to the requirements of the existing condition. VAN modifications to the existing condition would include the deletion of the first sentence and the last three sentences, the substitution of the term “remote origination service” for “two-way capable drops,” and the addition of a requirement that Comcast direct eligible institutions to contact their AMO to request remote origination service. Campitelli pf. at 8; exh. LGD-10 (updated 9/2/16) at 14.

147. Comcast opposes VAN’s proposed CPG Condition regarding outreach with respect to remote origination service as duplicative and unnecessary. Glanville reb. pf. at 33.

148. Comcast and VAN disagree about whether Comcast’s mailings to eligible institutions adequately inform such institutions that they may become remote origination sites for PEG programming. Chapman pf. at 15; Glanville reb. pf. at 32; exh. RC-3; exh. DMG-16.

Discussion re outreach to municipalities, schools, and libraries

VAN believes that it is important to inform municipalities, schools, libraries, and AMOs of the opportunity to have remote origination service. Comcast believes the requirement is duplicative and unnecessary. Although Comcast does not explain what it means when it states the condition is duplicative, the Board appreciates that sending the current mailings each year to institutions that have been receiving them for years may not be particularly productive. At the same time, it is important in terms of community needs and interests to have additional remote origination sites in the state. Accordingly, the availability of remote origination service and an explanation of what such service means should be highlighted in any letter sent or communication made to these institutions (and not just in the Comcast community outreach attachment to that letter, as appears currently to be the case).⁸⁹ Based on the foregoing, the Board will retain the existing condition with the changes proposed by VAN except that Comcast will be required to inform each institution about its eligibility to be a remote origination site at least once every two years rather than on an annual basis. The condition included in a renewal CPG, as so revised, shall provide as follows:

Comcast shall, at least once every two years, inform each municipality, school, library and AMO in every system subject to this Certificate of the opportunity to

89. Glanville reb. pf. at 32; exh. DMG 16.

have remote origination service placed at the locations described in condition 21 above and offer to meet to: (1) determine each entity's need for remote origination service; (2) in the case of municipalities, discuss the location(s) of such drop feed points within each municipality; and (3) negotiate the specific arrangements necessary for installation and maintenance of remote origination service. Comcast's correspondence will direct eligible institutions to contact their AMO to request remote origination service.

Existing CPG Condition 31 – Control of Upstream Signals from Remote Sites

149. Comcast's CPG Proposal omits condition 31 of the Existing CPG. The existing condition provides as follows:

31. Upon request of an AMO, Comcast shall provide the AMO an in-house ability to control upstream signals from each remote origination site within the AMO's service territory.

Comcast's CPG Proposal; Existing CPG at 10.

150. VAN proposes to retain this condition in its current form. Campitelli pf. at 8; exh. LGD-10 (updated 9/2/16) at 14.

151. Comcast has not universally deployed this capacity at activated remote origination sites. At the majority of these sites, the remote origination signal goes directly to the cable operator to go live on the PEG Access channel. Chapman pf. at 16; exh. LGD-2 at 12 & 22.

152. Comcast believes it is in compliance with Existing CPG condition 31 and does not believe this condition is necessary in a renewal CPG. Glanville reb. pf. at 33.

Discussion re control of upstream signals from remote sites

Comcast and VAN disagree about whether Comcast is currently in compliance with condition 31 of the Existing CPG.⁹⁰ In its reply brief, Comcast states that it has received no requests from AMOs related to this capability. These parties also disagree about whether the existing condition should be retained in a renewal CPG, with Comcast asserting that the condition is not necessary. Given VAN's support for the existing condition and the absence of a reasonable basis in the record for determining that the existing condition is no longer needed, the Board will retain the existing condition in a renewal CPG.

90. VAN Brief at 58; Comcast Reply Brief at 20.

Existing CPG Condition 32 – Internet Storage Space for AMOs

153. Comcast's CPG Proposal omits condition 32 of the Existing CPG. This condition currently requires Comcast to provide one gigabyte of internet storage space to each designated AMO. Neither VAN nor the Department objects to the omission of this condition. Comcast's CPG Proposal; exh. LGD-10 (updated 9/2/16) at 14; DPS Brief at 27.

Proposed New Condition Related to High Definition

154. VAN proposes a new condition for a renewed CPG that would, among other things, require Comcast, at the request of an AMO, to activate HD channels for existing PEG access channels in addition to the existing standard definition ("SD") channels for PEG. Comcast opposes VAN's proposed condition. VAN's proposed condition provides as follows:

1. HD PEG Channels are subject to requests for capacity by AMOs in accordance with Rule 8.405. At the effective date of this agreement each AMO is entitled to request, and Comcast shall activate, the same number of HD channels that is equivalent to the number of SD channels the AMO currently operates at the effective date of this CPG.
2. Comcast shall simultaneously carry the HD Access Channels per requesting AMO, in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channels already provided to Vermont AMOs by Comcast at the Effective Date of this agreement.
3. All SD Access Channels under this Franchise Agreement shall be included by Comcast, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Comcast, without limitation, as part of the lowest priced tier of HD Cable Service upon which Comcast provides HD programming content.
4. At such time as all other Basic Service Channels (or its equivalent tier) excluding Access Channels, are carried in HD, all remaining SD Access Channel Signals will also be carried by Comcast in HD.
5. Comcast will make reasonable efforts to locate HD PEG channels in reasonable proximity to HD local broadcast channels or similar public interest HD channels, or as close as the existing channel line-up will allow at the time the HD PEG channel is launched, or as otherwise agreed to with the AMO.
6. Comcast will locate HD PEG channels in a manner that enables the channels to be included in Comcast's Interactive Program Guide and supporting menu systems.
7. Via the HD signals provided by Comcast, an AMO may either simulcast SD programming or differentiate HD and SD programming. The provision of an HD channel does not eliminate the Company's obligation to provide PEG in SD.
8. The Company will provide any PEG access channels on the Basic Service tier throughout the life of the franchise, or if there is no basic tier, shall provide the PEG access channels to any Person who subscribes to any level of cable video

programming service , and otherwise in accordance with federal and state law. If channels are selected through menu systems, the PEG access channels shall be displayed in the same manner as other channels, and with equivalent information regarding the programming on the channel and access to features such as DVR, the Talking Guide and via voice activated remote. To the extent that any menu system is controlled by a third party, Company shall ensure that the Company will provide PEG listings on that menu system, if it is provided with the programming information by a designated entity.

9. If Comcast incorporates new or emerging improvements in Channel delivery, such as 3DTV, 4K UHD TV and 8K UHD TV, the new channel formats will also be subject to requests for capacity by AMOs in accordance with Rule 8.405.⁹¹

Mobley pf. at 15-24 and reb. pf. at 3-9; Campitelli pf. at 26-27; Glanville reb. pf. at 36-37; exh. LGD-10 (updated 9/2/16) at 36-37.

155. Comcast subscribers are able to receive more than 100 HD channels. Comcast provides both an HD channel as well as a SD channel for many of the channels it carries on its Vermont systems. No PEG channel in Vermont is delivered on Comcast's system in HD as Comcast has not been willing to provide the Vermont AMOs with HD channel capacity on Comcast's system during contract negotiations with Vermont AMOs. Glanville pf. at 9; Davitian pf at 32-33; Campitelli pf. at 5 & 26-27; Mobley pf. at 16 and reb. pf. at 7; exh. DMG-6.

156. Burlington Telecom, VTel, and Charter have provided HD channels to Vermont AMOs. Mobley pf. 16 and 18.

157. Comcast has at least ten franchise agreements with local franchising authorities in other parts of the country that include PEG access to HD channels as a requirement. Mobley pf. at 21 and reb. pf. at 6-7.

158. Vermont AMOs, depending on their size, are in varying stages of readiness to fully produce HD programming and operate HD channels. A number of Vermont AMOs are already producing a majority of their content in HD. Mobley pf. at 19.

159. For some of the smaller AMOs in Vermont, additional capital funding ("spike funding") could be required to help them complete the transition to HD, as was needed during the digital transition. Mobley pf. at 20.

91. VAN's proposed condition references "this agreement" and "this Franchise Agreement." The Board understands that these references were meant to reference the CPG or, in some cases, PEG access agreements between Comcast and designated AMOs.

160. There is generally no difference in cost for Comcast in cablecasting in HD rather than SD except for the necessary electronic components. However, if a channel is unique, meaning that it has to be mapped in a different area available to a subset of customers, cost can be a factor because a separate line up has to be created on that map so that the channel can be available. Tr. 7/18/16 at 53 (Glanville).

161. As technology changes over time, the amount of signal required for any single channel has changed. Glanville reb. pf. at 38; Crawford pf. at 20-24 and reb. pf. at 8-9.

162. Television viewing in HD has become standard for many cable subscribers, and subscribers, who have access to HD channels, are more likely to watch HD channels than SD channels because of their higher picture quality. One-half of the respondents to a statistical survey that was part of the Department's CNA reported that they watched all or almost all of their television content in HD. Mobley pf. at 18 & 19; exh. CP-1 (Attachment D to CNA report at 16).

163. According to a statistical survey of 600 Comcast cable customers in Vermont sponsored by Comcast, 75% of respondents have televisions in their home that are capable of showing programming in HD, and 56% of the respondents reported that their household currently subscribe to HD services from Comcast. Exh. DMG-12 (Appendix A at 23).

164. Comcast does not believe the viewership of PEG channels in the state is adequate to justify the provision of PEG channels in HD as well as SD. Glanville reb. pf. at 37; exh. CP-1 (Attachment D to CNA report at 26); exh. Comcast-6.

165. Viewers of and producers of content for PEG channels strongly support the activation of HD channels for PEG access as a community need. Participants in every CNA focus group meeting said that PEG channels would benefit greatly from being able to broadcast in HD. Among respondents to the statistical survey conducted as part of the CNA, 39.5% of the respondents stated that they would like to watch PEG channels in HD. Exh. CP-1 (CNA report at 3-4 & 8; attachment D at 30); exh. LGD-2.

Discussion re PEG channels in HD format

The presentation of television content on HD channels is increasingly becoming the norm, and the number of broadcast and commercial network channels presented only in a SD format appears to be growing smaller. In 2005, the Board observed that Comcast's systems provided

their customers with as many as 15 HD channels.⁹² Comcast's systems in Vermont currently provide over 100 HD channels.

PSB Rule 8.404 permits an AMO under PSB Rule 8.405 to request the activation of additional PEG channels beyond the activation of the first three PEG channels provided for in PSB Rule 8.403. In order to promote the use and availability of PEG content consistent with the development of cable technology, the Board has previously found that the public purposes of a cable system should expand proportionately as the cable operator expands the commercial capacity and applications of its network.⁹³

VAN believes it is now time to impose specific requirements in the CPG with respect to the activation of HD PEG channels. VAN supports its proposal by arguing that Comcast is discriminating against PEG channels by refusing to provide Vermont AMOs with requested HD channels that are provided to locally broadcast channels and to many other channels on Comcast's systems. VAN also presents this issue as a bandwidth issue noting that the portion of the total bandwidth allocated to PEG programming on cable systems continues to decline as cable systems expand their commercial services and functions.⁹⁴

Comcast sees VAN's proposal for PEG HD channels as a technology mandate that is beyond the authority of the Board to impose without Comcast's agreement. Comcast also objects to any attempt to tie PEG channel obligations to bandwidth rather than on the number of designated PEG channels for each AMO. As set forth in Comcast's prefiled testimony, "[e]fficiencies gained by Comcast's investment in new technologies that make better use of signal will be allocated by Comcast to the services it deems appropriate and competitively necessary."⁹⁵

The evidence indicates that a majority of Comcast subscribers in Vermont now view some channels in HD. However, HD channel viewing in Vermont does not yet appear to the Board to be sufficiently pervasive to trigger a requirement to provide HD PEG channels (aside from

92. Docket 7077, Order of 12/29/05 at 13 (finding 39).

93. Docket 6101, Order of 4/28/00 at 152 (finding 163).

94. See Davitian pf at 11, 17, & 27; Crawford pf. at 17 27. The Board Order approving the issuance of renewal CPGs to Adelphia included a finding that "ten percent of total bandwidth should be set aside for additional [PEG] access channels and uses as needed." Docket 6101, Order of 4/28/00 at 152 (finding 162).

95. Glanville reb pf. at 38.

arrangements for HD PEG channels that may be negotiated with designated AMOs).⁹⁶ In addition, there appear to be a significant number of other channels on Comcast's basic digital tiers (in addition to the PEG channels) that are only cablecast in a SD format on Comcast's system.⁹⁷ The costs to Comcast in providing PEG HD channels in addition to SD channels also need to be clarified.⁹⁸

The Board is aware that franchising authorities in other jurisdictions have adopted requirements that either trigger the activation of HD PEG access channels when certain conditions have been met or set a date when the need for HD channels shall be discussed. Without further information, the Board is reluctant to establish firm conditions or targets that automatically trigger an HD channel activation requirement with respect to PEG channels. However, the Board believes it is appropriate to provide a mechanism during the term of a renewed CPG whereby VAN or AMOs may petition the Board in the future to reconsider the need for requirements related to the provision of HD channels for designated AMOs.

Accordingly, the Board will require Comcast to provide additional information that might be relevant to such a future determination in its annual reports. In addition, the Board will open and conduct a proceeding related to the establishment of requirements related to the provision of HD PEG channels upon the filing of a request to open such a proceeding by VAN, the AMOs, the Department, or Comcast that is filed with the Board at least two years after the issuance of the CPG in this proceeding. In addition to other matters, the Board will consider in such a proceeding issues related to the authority of the Board to require Comcast to provide HD channels as well as SD channels to the AMOs, applicable requirements of state and federal law, and the reasonableness of any such requirements in light of future cable-related community needs and interests. The contemplated proceeding is in addition to any existing legal process whereby any

96. The Board understands that to date Comcast has been unwilling to provide any HD PEG channels regardless of the readiness of any AMO to provide HD content for such a channel. With the knowledge that the Board may impose such obligations in the future, Comcast should be more willing to seriously consider requests from HD capable AMOs under PSB Rule 8.405.

97. Exh. DMG 6.

98. It is also possible that the modifications to headend facilities required to enable program information for Vermont PEG channels to be included on Comcast's IPG might reduce the unique channel mapping costs of cablecasting PEG HD channels that Mr. Glanville identified during the technical hearing.

AMO or Comcast may request Board review with respect to any contractual disputes regarding the activation of additional PEG channels.

Based on the foregoing, the Board determines that the following condition shall be included in a new CPG:

Until such time as there is a requirement related to the activation of high definition (“HD”) PEG channels on Comcast’s systems in Vermont, Comcast shall provide the following information with the annual reports it files pursuant to 30 V.S.A. §§ 22 and 514:

1. the average number of HD channels and standard definition (“SD”) channels on Comcast’s digital starter tier (or its future equivalent) in its Vermont systems and the identity of all channels on such tier (other than PEG access channels) that are carried only on SD channels in Vermont;⁹⁹ and

2. the percentage of its Vermont cable television subscribers who either subscribe to any of Comcast’s digital services, such as digital economy or digital starter services, or whose subscription includes a HD digital converter that allows them to view HD channels with a limited basic or a expanded basic service subscription, or who subscribe to any service in the future that provides access to HD channels.¹⁰⁰

In addition, the Board will open a proceeding related to the activation of HD PEG channels on Comcast’s systems in Vermont upon a request by the Vermont Access Network, the Vermont Department of Public Service, Comcast, or any AMO designated by Comcast in Vermont that is filed at least two years after the issuance of this Certificate.

Proposed New Condition on Video-on-Demand Capacity

166. VAN proposes a new CPG condition, which Comcast opposes, related to requiring Comcast to make available to each AMO a minimum of 20 hours of capacity on Comcast’s video-on-demand platform for the shared use of PEG channels. The proposed condition provides as follows:

Comcast will make available a minimum of twenty (20) hours of capacity on its Video On Demand (“VOD”) platform for each individual Vermont Access Management Organization to allocate for the shared use by its PEG channels. The Access Management Organization operators shall be solely responsible for uploading of all such programming in the manner required by the

99. See exh. DMG 6.

100. See exhs. DMG 6 and DMG 9.

[Comcast's] VOD intake system and for populating all menus and program descriptions. Comcast shall be responsible for any down-conversion from HD to SD for the programming as submitted by the AMO. PEG programs will be listed on the VOD menu in a nondiscriminatory manner to other local programming. If Comcast incorporates new or emerging improvements that hinge on the changing definition of cable capacity (per Rule 8.000 definition (L)), AMOs may submit written requests to meet with Comcast subject to 8.405. Without further obligation, following receipt of such a request, Comcast will participate in discussions of these improvements or enhancements with the AMO. These discussions shall address potential options for improvements and enhancements of delivery of PEG content, including possible technical means and costs of incorporating such improvements or enhancements for delivery of PEG content.

Chapman pf. at 50-55; Glanville reb. pf. at 42-43; exh. LGD-10 (updated 9/2/16) at 41-42.

167. Vermont AMOs do not currently have access to Comcast's video on demand ("VOD") services, which allow viewers to watch program content whenever they wish by playing them on Comcast's video services. Chapman pf. at 50.

168. Television viewing habits are increasingly changing from "appointment" television towards "on demand" content. Many viewers of AMO video content watch meetings of local governments on AMO websites at a time of their convenience. Chapman pf. at 51.

169. VAN believes that the ability of Comcast subscribers to access PEG channel content on an on-demand basis will be valuable to Vermonters in providing convenient access to meetings of local government, school boards, state government, and community events. Chapman pf. at 51.

170. Comcast has franchise agreements with local franchising authorities in other parts of the country under which Comcast has agreed to provide capacity for PEG use on its VOD platform. Chapman pf. at 53

171. VAN recognizes that the amount of content produced by Vermont AMOs is significant and that limits and protocols will be necessary for curating "on demand" content. VAN has established protocols for sharing files through the VMX and something similar would need to be established for VOD services. The AMOs will need assistance from Comcast to understand the technical requirements, protocols, and limits associated with VOD services. Chapman pf. at 54.

Discussion re provision of VOD capacity to AMOs

Comcast maintains that VAN's proposed condition to provide the AMOs with capacity on its VOD platform would be a technology mandate that is beyond the authority of the Board.

Comcast also notes that, in contrast with the significant interest many of its subscribers have in watching other video content on demand, only a small percentage of its subscribers have an interest in viewing PEG content on demand.

VAN argues that it does not seek to prescribe specific technology with respect to this and other conditions it proposes, but is only seeking to gain access to existing cable system features that Comcast has been unwilling to provide in negotiations with Vermont AMOs. It places particular emphasis on the terms of the FCC Memorandum Opinion and Order issued in connection with Comcast's 2011 acquisition of NBC Universal.¹⁰¹ VAN specifically notes that the FCC order imposes a condition that "Comcast cannot discriminate against PEG with respect to the functionality, signal quality, and features from those of the broadcast stations it carries."¹⁰²

Comcast asserts that the Comcast-NBC Universal order is solely a matter between the FCC and Comcast and does not provide authority to the Board to impose conditions that are not permitted under federal law. Even if the Board were to accept Comcast's assertion, the Board observes that the explicit statement in the order related to PEG access to a system's features and functionality suggests that the FCC would not view the consideration of the access that PEG channels have to such features relative to broadcast channels to be beyond the purview of local franchise authorities in franchise renewal proceedings. Nevertheless, any determination about a condition requiring that PEG channels have the same access to a particular feature of a cable operator's system that is accorded to non-PEG channels, also needs to ascertain the community needs and interests related to making that feature available for PEG channels, the extent to which the feature is broadly available to other network channels, and the costs of providing the feature to the PEG channels.

Comcast argues in this and other instances in which VAN seeks access to functionality, features, and services provided for other channels on Comcast's system that there is limited public interest in PEG channels as indicated by their viewership. The Board strongly rejects any assertion that the value of PEG channels in meeting community needs can be largely measured by

101. Exh. LGD 4.

102. Exh. LGD 4 at 88-89 (¶ 214). The Order also addresses PEG access to Comcast's on demand platform by requiring Comcast develop a platform to host PEG content on demand at five service area locations selected by Comcast as trial sites. Exh. LGD 4 at 89 and in Appendix A at 139-140.

their viewership. As both Congress and the State of Vermont have recognized, PEG channels can help meet the substantial and compelling interests of a democratic society in enabling first-hand knowledge of local governmental decision-making and events, in providing diverse and local sources of information and ideas, and in helping create an informed and educated citizenry. The success of AMOs in creating a vibrant network of PEG channels in Vermont is measured not by their day-to-day audiences but by how effectively they meet the needs of citizens in their communities by providing coverage of local meetings of interest to them (even if that interest is very occasional or only a one-time occurrence related to a particular local decision that affects them), by generating more informed conversations about local issues and greater public participation in local affairs, by presenting educational content that expands minds and opportunities, and by broadening perspectives through the exposure to diverse sources of information and ideas.

Making capacity available to the AMOs on Comcast's VOD platform would expand the benefits interested citizens would receive from PEG access on cable systems. While many viewers can access PEG video on AMO websites, the availability of such content through the Comcast system would increase the number of viewers who watch PEG content of interest to them. However, based on the limited record, the Board does not believe it has sufficient information to make a determination with respect to this proposed condition. Such a determination would require a better understanding of the reasonableness of the proposed condition in light of community needs and interest, which might include, among other things, consideration of the extent to which commercial network programs are routinely available after television channel broadcast on Comcast's VOD platform, the general nature of the financial arrangements that exist between Comcast and the commercial networks for making VOD content available to Comcast subscribers, and what the costs to Comcast would be in making some of the capacity of the VOD platform available to the AMOs and in providing assistance to the AMOs in adding and removing content to and from the VOD platform.

As a result, the Board has determined not to add a requirement related to PEG access to Comcast's VOD platform capacity as a condition of the CPG. However, this does

not foreclose any AMO or Comcast from requesting Board review, as provided for under applicable law, of any contractual dispute related to this issue.

Proposed New Condition on AMOs and Cable System Technological Changes

172. VAN proposes a new CPG condition related to technological changes to Comcast's system that affect the AMOs and the delivery of PEG content. The proposed condition provides as follows:

In the event Comcast makes any change in the Cable System and related equipment and Facilities or in Comcast's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Comcast shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of AMO personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change.

1. In no case, shall the Signal quality or transmission of Access Programming diminish compared to the quality being achieved prior to the change in technology, provided that this requirement shall not prohibit Comcast from implementing new technologies also utilized for commercial channels carried on its Cable System. Technical quality shall continue to meet all applicable standards contained in VAN's proposed New Condition 7.

2. If Comcast incorporates new or emerging improvements in Channel delivery or display on its Channels made available to Residential Subscribers, AMOs may submit written requests to meet with Comcast subject to 8.405.

3. If Comcast incorporates new or emerging improvements in Channel delivery, such as 3DTV, 4K UHD TV and 8K UHD TV, the new channel formats will also be subject to requests for capacity by AMOs in accordance with Rule 8.405.

Byer pf. at 31 and 35-36; exh. LGD-10 (updated 9/2/16) at 42-43.

173. In an environment in which rapid changes in technology continue to occur related to provision of services over hybrid fiber and coaxial cable networks, the Vermont AMOs are concerned that AMOs achieve access to advances in cable technology. Byer pf. at 31-34; Davitian pf. at 12, 23-24 and 27-31; Crawford pf. at 34-35 and generally; Campitelli pf. at 8-13 and 17-20.

174. In VAN's view, Comcast has made decisions over the term of the Existing CPGs to improve the architecture of its system by adding commercial features without adequate consideration of how it will meet PEG needs. Byer pf. at 32.

175. Comcast has franchise agreements with local franchising authorities in other parts of the country in which Comcast has agreed to address PEG access requirements in the event of technological changes to its cable system. Byer pf. at 34.

Discussion re proposed technological change condition

Comcast opposes VAN's proposed condition on technological changes that affect PEG access. Although the Board believes that the concerns of the AMOs are legitimate, there is relatively little evidence in the record related to the specific requirements and effects of VAN's proposed condition on technological changes.

As general principles, the Board agrees with VAN that when a cable operator implements technological changes or undertakes technology upgrades to its system, applicable law requires it to take account of the effect on PEG capabilities, services, and signal quality, to consider how it can effectively meet its obligations for PEG access in light of such technological changes, and to take appropriate action to ensure that it will remain in compliance with its applicable obligations after implementing the technological change. The Board also continues to believe that the public purposes of a cable system should expand as the cable operator expands the commercial capacity and applications of its network.¹⁰³ However, this does not necessarily imply that every time a cable operator incorporates a new technology that may be available for commercial network channels, such as 3DTV, 4K UHD TV and 8K UHD TV technology, the cable operator necessarily has a concomitant obligation to provide that technology for PEG channels. Any such determinations have to be made based on the reasonableness of providing PEG access to such technology in light of cable-related community needs and interests for PEG access. Based on the foregoing, the Board does not find a sufficient basis to include VAN's proposed condition in the renewed CPG.

Proposed New Condition on PEG Channel Quality

176. VAN proposes a new CPG condition related to ensuring that the PEG Access channels are not discriminated against with respect to functionality, signal quality, and features relative to the local broadcast channels that are carried on Comcast's system, and providing proof-of-

103. Docket 6101, Order of 4/28/00 at 152 (finding 163).

performance testing of PEG access channels and interconnections twice a year. The proposed new condition provides as follows:

Comcast shall maintain all Access Channels and Interconnections of Access Channels at the same level of technical quality and reliability required by all applicable laws, rules and regulations for Residential Subscriber Channels. Comcast shall not discriminate against PEG Access Channels with respect to the functionality, signal quality, and features from those of the local Broadcast Channels that Comcast carries. Each PEG Channel shall be delivered to Subscribers without material degradation so that each PEG Channel is as accessible, recordable, and viewable as other channels on the Basic Service Tier and available in the same resolutions and at a quality equal to the quality of the commercial cable channels in the Basic Service Tier. Access Channels and Interconnections shall be tested semi-annually, consistent with its FCC Proof-of-Performance testing, at representative points throughout the Cable System for compliance with all applicable standards. Documentation of such tests shall be provided to the PSB, DPS and VAN. Comcast shall promptly resolve any non-compliance issues.

Byer pf. at 36-38 and reb. pf. at 13-14; exh. LGD-10 (updated 9/2/16) at 43-44.

177. VAN is concerned that the PEG channels are not given the same consideration as commercial channels in the basic service tier of Comcast's system. Byer pf. at 36.

178. VAN's proposed condition is directed at requiring Comcast to deliver PEG channels with the same technical quality and reliability as other channels and to allow PEG channels access to the same system features as commercial channels. Byer pf. at 36-37.

179. Comcast entered into a franchise agreement with the City of Philadelphia in 2015 in which it agreed that it will "not discriminate against PEG Access Channels with respect to the functionality, signal quality, and features from those of the local Broadcast Channels that Comcast carries." Byer pf. at 36.

180. VAN has compiled documentation from AMO Annual Reports related to channel quality issues. Byer reb. pf. at 14; exhs. LGD-16 and LGD-17.

181. Comcast opposes VAN's proposed CPG condition regarding PEG channel quality as this condition seeks to impose additional, unnecessary reporting requirements. Comcast notes that no concerns about PEG signal quality have been raised by the Department. Glanville reb. pf. at 44.

182. Comcast is required to perform FCC Proof-of-Performance testing semi-annually. The only report requirement in the condition is to provide documentation of such testing. Byer reb. pf. at 13.

Discussion re PEG channel quality

Comcast's principal objection to VAN's proposed condition on channel quality appears to be the second sentence which provides that "Comcast shall not discriminate against PEG Access Channels with respect to the functionality, signal quality, and features from those of the local Broadcast Channels that Comcast carries." Comcast claims this condition is based on VAN's misinterpretation of FCC's Comcast-NBC Universal Order and "would function as a backdoor mandate of transmission technology" in violation of applicable federal law.¹⁰⁴

Existing state and federal laws and regulations address issues related to PEG channel signal quality.¹⁰⁵ While the Board understands the concerns that prompted VAN to propose this condition, the Board does not believe the condition is necessary to the extent it reiterates existing state and federal law obligations. In addition, VAN's proposed condition appears to impose additional requirements on Comcast related to PEG channels that are not currently required under state or federal law without there having been an adequate consideration of community needs, interests, and costs. The Board will therefore not include VAN's proposed new condition on signal quality in the renewal CPG.

(3) Line Extensions -- Existing CPG Conditions 33-43 and Proposals

[30 V.S.A. § 504(c)(5); PSB Rule 8.214(B)(3) & (7) and 8.313;
47 U.S.C. § 546(c)(1)(A)&(D) & PSB Rule 8.230(A)&(D)]

183. Comcast's CPG Proposal omits conditions 33 to 43 of the Existing CPG and replaces them with the following condition:

With regard to requests for line extensions to provide cable service, Comcast shall abide by Board Rule 8.000, including Rule 8.313, and shall file a statement of the Company's policy on expansions of service into unserved areas as a tariff for the Board's approval.

Comcast's CPG Proposal at 9; Existing CPG at 10-19.

104. Comcast Reply Brief at 25.

105. *See, e.g.*, 47 U.S.C. §535(g) and 30 V.S.A. § 504(b)(2).

184. The Department does not object to Comcast's proposed condition or any of the proposed omissions from the Existing CPG, but recommends that the following additional condition be included in a new CPG:

Comcast shall construct no less than 550 miles of line extensions into uncabled areas during the term of this CPG. Comcast may satisfy this obligation either by fully funding the line extensions or by collecting contributions-in-aid-of-construction from customers pursuant to its line extension tariff. Any line extensions that are funded by a grant from any federal or state governmental agency shall not be used to satisfy this requirement. Comcast shall annually file with the Board and the Department a report that details all line extensions completed during the prior calendar year. This report shall, at minimum, describe the length and location of all completed line extensions and the funding source for such extensions.

Chase pf. at 4-5 and reb. pf. at 4 & 6; DPS Brief at 29.

185. Condition 38 of the Existing CPG requires Comcast to calculate annually a minimum qualifying density (referred to in PSB Rule 8.313(B)(1) as "H") for purposes of Comcast's line extension tariff and to submit such calculation each year with its annual report. Comcast has not included such a calculation with its annual reports since its 2008 annual report was filed. Chase pf. at 2 and reb. pf. at 5; exh. CRC-9; Existing CPG at 5 & 12; PSB Rule 8.313(B)(1)&(2).

186. Comcast has filed a line extension tariff, and the Department has no reason to believe Comcast has violated the terms set forth in that tariff. Comcast builds line extensions based on customer requests in accordance with its line extension tariff. Comcast's current line extension tariff, effective March 17, 2010, establishes a qualifying density of 16 verified subscribers per mile for purposes of determining if a line extension will require a contribution-in-aid-of-construction ("CIAC") payment from customers and, if so, the amounts of such contributions. The applicable customer contributions are calculated based on an algebraic formula set forth in Rule 8.313(B)(1). Chase pf. at 2 & 6; Glanville pf. at 14 and reb. pf. at 9; tr. 7/18/16 at 106 (Chase); PSB Rule 8.313(B)(1).

187. In connection with Comcast's acquisition of the Adelphia cable systems in Vermont, Comcast agreed to assume the uncompleted line extension obligations of Adelphia, and requirements to that effect were included in the Existing CPG. Glanville pf. at 17-18 and reb. pf. at 8; Existing CPG at 13-19 (conditions 39 through 43).

188. From 2006 to 2009, Comcast completed 998 miles of line extensions in Vermont to satisfy these CPG line extension requirements. Glanville pf. at 18 and reb. pf. at 8.

189. During the term of the existing CPGs, Comcast has also built approximately 416 miles of line extensions in response to customer requests, and has built or agreed to build approximately 20 miles as part of grant agreements. Glanville reb. pf. at 8-9.

190. Overall, Comcast has constructed approximately 1,430 miles of line extensions since it acquired its Vermont system from Adelphia. Glanville reb. pf. at 8-9.

191. Comcast completed 68.6 miles of line extensions during 2010; 48.67 miles during 2011; 29.8 miles during 2012; 42.98 miles during 2013; and 39.30 miles during 2014. Exh. CRC-8.

192. During 2014 and 2015, less than 20% of the line extensions completed by Comcast included CIAC payments by the customer. Tr. 7/18/16 at 110-112 (Glanville).

193. Based on information submitted in its annual reports, Comcast has budgeted to construct an average of approximately 48.69 miles of line extensions since 2008. Comcast has built fewer miles of line extensions than it has budgeted for in its annual reports. Chase pf. reb. at 2 & 4.

194. When Comcast completes a line extension, the newly installed plant is capable of providing unregulated voice and internet services in addition to cable television services. Tr. 7/18/2016 at 50-51 (Glanville).

195. Comcast's cable television and internet services are provided by the same Comcast subsidiary, but its voice services are provided by a separate legal entity. Tr. 7/18/16 at 50 (Glanville).

196. The CNA report concludes that there is widespread support for Comcast expanding its service area. The Department received feedback at every focus group meeting that citizens wished Comcast service was available to them or to neighbors who live in areas where Comcast does not currently serve. Exh. CP-1 (CNA Report at 3 and 8).

197. The amount of net revenue that Comcast earns in Vermont indicates that Comcast could likely invest more in line extensions and still produce significant net revenue. Chase pf. at 6; Foley pf. at 3; finding 10, above.

Discussion of Existing and Proposed Line Extension Conditions

Comcast appears to have substantially complied with most of the material line extension terms of its existing CPGs. Since its acquisition of Adelphia's cable systems in 2006, Comcast has completed 1430 miles of line extensions in Vermont and has substantially complied with the line extension requirements set forth in conditions 39 through 43 of the Existing CPG.¹⁰⁶ The Board also notes that amendments in 2010 to PSB Rule 8.313 contained, among other things, provisions that expressly "supercede and remove any requirement to perform 'house count surveys' in any previously issued CPG," which would include condition 35 of the Existing CPG.¹⁰⁷

In prefiled testimony, a Department witness observed that Comcast since 2009 has not submitted any annual calculations, as provided for in condition 38 of the Existing CPG, of its minimum qualifying density under its line extension tariff for requested line extensions that do not require CIAC payments from customers.¹⁰⁸ Condition 38 of the Existing CPG provides as follows:

38. Comcast shall annually calculate Minimum Qualifying Density for the purpose of the Company's line-extension policy and shall report that calculation in its Annual Report to the Department. The calculation shall be performed using homes-passed, penetration, and revenue data from the Annual Report to the Department, as provided in the Docket 6101 Order. The calculation shall be performed using Comcast's average construction cost per mile for qualifying line extensions during the prior year as the assumed construction cost per mile. Comcast may use current data for all other parameters in the formula, including the carrying charge factor. To the extent possible, all elements of the formula should be based on the same time period. If audited financial statements are not available, Comcast shall use unaudited numbers. The recalculation of the Minimum Qualifying Density shall be subject to review by the Board.

106. See, in addition to above findings, Docket 7077, Orders of 12/29/05 & 10/16/08 and exh. CRC 3.

107. See, also, exh. Comcast 3 and exh. DMG 13

108. Under PSB Rule 8.313, each cable company is required to file a statement of its policy on the expansion of service into unserved areas as a tariff. Also relevant in this regard is condition 33 of the Existing CPG, which provides as follows:

33. Line extensions shall be built without customer contribution in accordance with Comcast's annual calculation of the Qualifying Density ("H"), which determines the average density of equivalent year round residential and business units passed per mile, starting at the nearest end of the existing trunk or distribution system, for the next calendar year.

In very general terms, the formula provided for in the referenced Docket 6101 Order allowed for the determination of the verified number of subscribers per mile that Comcast would require for a line extension without CIAC by dividing the average annual cost related to a mile of line extensions (including a return on investment) by Comcast's average annual revenue per subscriber in the previous year.¹⁰⁹ The number derived from this calculation under condition 38 was used by Comcast as the basis for adjustments to its line extension tariff from 2006 to 2009.¹¹⁰

PSB Rule 8.313(B)(1) now requires a cable company to designate a value for H in its line extension tariff based on the number of verified subscribers per mile above which the company will not require a CIAC payment.¹¹¹ Under PSB Rule 8.313(B)(2), no cable operator may file a line extension policy that specifies a number of verified subscribers in excess of 16, that is the current maximum value for H under the rule.¹¹²

As set forth in prefiled testimony, Comcast's current line extension tariff, effective March 17, 2010, designates a value for H of 16 verified subscribers per mile (that is, a number which is the equivalent of the maximum value for H that can be specified by any cable operator in the state). Comcast has provided no support for this designation, but Comcast presumably based this value, as is the case with its previously filed line extension tariffs, on a value derived from

109. See Docket 6101, Order of 4/28/00 at 119-123 and Order of 7/19/00 at 17-18; Docket 6101 CPGs (revised 7/19/00) at 13.

110. The minimum qualifying density number in Comcast's line extension tariff, based on Comcast's condition 38 calculations, increased from 8.55 verified subscribers in its 2006 tariff to 12.47 verified subscribers in its 2009 tariff. See Comcast's filed tariffs and exh. CRC 9. Prior to the 2010 amendment of PSB Rule 8.313, the condition 38 calculation was also used to determine the minimum number of homes and businesses passed in unserved areas that would require a line extension to be built. This calculation was based in part on the service penetration rate among homes passed by its existing cable plant. However, the ability to make the calculations would not appear to be dependent on the unserved area house count surveys previously required by condition 35 of the Existing CPG. And in any event, a calculation of the penetration rate ("P") is no longer needed under the Docket 6101 Order formula to derive an "H" value under amended PSB Rule 8.313(B)(1) because H now represents a designated number of verified subscribers rather than a designated number of dwelling units passed.

111. From at least 1991 to 2010, the value for H was the number of dwellings per mile, and the minimum qualifying density for line extensions without customer contributions was 25 dwellings per mile.

112. PSB Rule 8.313(B)(2) allows the Board to re-set the maximum value for H once every three years after notice and an opportunity for comment. The Board has not re-set the maximum value for H since the adoption of the amended rule in 2010.

calculations made under condition 38 of the Existing CPG.¹¹³ Given the significant gains in Comcast's average revenue per subscriber in Vermont since 2007,¹¹⁴ the reasons for the increases in Comcast's qualifying density from 8.55 verified subscribers in its 2006 tariff to 12.47 verified subscribers in its 2009 tariff to 16 verified subscribers in its 2010 tariff is not at all apparent. In the Board's view, this highlights the need for Comcast to provide additional information to support any determination of qualifying density for purposes of its line extension policy and tariff.

To ensure the construction of needed line extensions, earlier proposals of the Department in this docket contemplated a number of other measures in addition to a requirement to complete a minimum of 50 miles of line extensions each year. These measures included periodic house count surveys, automatic build-out requirements if a minimum density is met, and revisions to Comcast's line extension tariff to calculate H based on current data and to potentially lower the customer portion of CIAC.¹¹⁵ The only line extension term presented by the Department in its final proposal for a renewed CPG is that Comcast complete 550 miles of line extensions over the term of the renewed CPG.

In its final proposal, the Department does not request that the Board include conditions in the renewed CPG relating to Comcast's line extension tariff, its "H" factor, or house count surveys.¹¹⁶ The Board finds it acceptable to exclude most of these conditions. The Board adopts the proposal of both the Department and Comcast to omit all conditions of the Existing CPG related to line extensions, except that the Board does not accept the proposed omission of

113. As noted above, an appropriate H value under the amended rule can easily be derived under the Docket 6101 Order formula, $H = (((C \times T) \div 12) \div R) \div P$, by eliminating one of the variables, the penetration rate or P, in the calculation of H, that is, by not dividing $((C \times T) \div 12) \div R$ by P.

114. See exh. Comcast 4, finding 9 above, and finding 2 in Docket 7077 Order of 12/29/05 at 7. It appears that Comcast's average annual revenue per cable subscriber has increased from approximately \$985 in 2007 to approximately \$1,615 in 2014. This does not appear to include revenue that Comcast receives from services other than cable television services (e.g., internet and digital voice) that would also increase as a result of any line extension and would appear relevant in determining whether a line extension is viable for a cable operator. See Docket 6101 Order of 4/28/00 at 122-123 and Order of 7/19/00 at 18.

115. Chase reb. pf. at 4-5.

116. DPS Reply Brief at 3.

conditions related to the reporting of calculations of qualifying density.¹¹⁷ Such annual support for Comcast's calculation of qualifying density provides the Board and the Department with some basic material information for assessing the reasonableness of Comcast's value for "H" in its line extension tariff.

Accordingly, the Board will retain conditions 33 and 38 of the Existing CPG in slightly modified form in a renewed CPG as a single condition as set forth below:

Line extensions shall be built on request without customer contribution in accordance with Comcast's line extension tariff based on an annual calculation of the minimum average number of verified subscribers per mile ("Qualifying Density" or "H") for the next calendar year. Comcast shall report the basis for its calculation of Qualifying Density with its Annual Report to the Department. The calculation shall be performed based on the formula set forth in the Board's Orders in Docket 6101 and shall use revenue data from the Annual Report to the Department and Comcast's average construction cost per mile for qualifying line extensions during the prior year as the assumed construction cost per mile. Comcast may use current data for all other parameters in the formula, including the carrying charge factor. To the extent possible, all elements of the formula should be based on the same time period. If audited financial statements are not available, Comcast shall use unaudited numbers. Any calculation of the Qualifying Density shall be subject to review by the Board.

The Department argues that its proposal for Comcast to complete additional line extensions in Vermont is both appropriate and necessary. Specifically, the Department recommends that Comcast, over the eleven year term of the new CPG, be required to construct at least 550 miles of line extensions, which would include line extensions funded by CIAC payments from customers.

The Department believes that its proposed line extension condition is reasonable in light of the evidence and is consistent with applicable law. The Department acknowledges that Comcast has completed substantial line extensions and other upgrades to its cable network since it acquired the Adelphia systems in 2006 and that those line extensions and upgrades have provided significant public benefit by providing access to Comcast's cable, voice, and broadband internet services in

117. The inputs, formula and calculation requirements for qualifying density set forth in the Docket 6101 Orders were adopted more than 15 years ago and may need to be updated to reflect changes in the technology and business of the cable industry and in their provision of services. This matter may be addressed in a future line extension tariff investigation or in a rulemaking proceeding. Until such time, Comcast has a continuing responsibility for developing a line extension policy and tariff that realistically assess the costs and revenues related to line extensions, based on the inputs and formula developed in Docket 6101.

areas of Vermont that were previously underserved.¹¹⁸ It observes, however, that the overwhelming majority of Comcast's line extensions were completed as a result of regulatory requirements. It asserts that Comcast has been able to generate substantial profits in Vermont even after completing 1430 miles of line extensions in the state during the terms of the existing CPGs.¹¹⁹ In addition, the Department notes that line extensions allow Comcast to generate additional revenue and profits from services in addition to cable television, such as digital voice and internet services.

The Department emphasizes the importance in CPG determinations of considering the "availability of service to maximum number of residences" under one of the "EMCO" criteria set forth in PSB Rule 8.214(B)(7). Given the substantial profits Comcast has generated in Vermont during the term of the existing CPGs, the Department argues that Comcast can continue to expand its footprint in Vermont and operate profitably. The Department further believes that its proposal to require Comcast to construct 550 miles over the term of CPG (an average of 50 miles a year) is reasonable, as it is generally consistent with the average miles of line extensions provided for in Comcast's annual construction budgets for 2008 through 2015.

Comcast opposes the Department's line extension proposal and views the line extension obligations it would impose on Comcast as onerous, invasive, costly, and unfair to Comcast. Comcast maintains that the line extensions it undertakes during the term of a renewed CPG should be determined in accordance with Comcast's obligations under its line extension tariff, Board line extension rules, and voluntary decisions by Comcast to construct additional miles of line extensions that reflect its business practices and the need for particular line extensions.

Comcast regards the imposition of additional line extension obligations in the Department's proposal as "potentially discriminatory" and "not justified by the Company's compliance and construction history" and contends that it may have the effect of discouraging further voluntary investments by Comcast in its Vermont cable franchise.¹²⁰ Comcast states that it expects to continue to build line extensions in Vermont as it has in the past "taking into account all prudent

118. DPS Reply Brief at 2.

119. See findings 10, 190, and 197, above, and exh. Comcast 4.

120. Comcast Reply Brief at 7.

business practices and needs at the time.”¹²¹ Comcast asserts that similar line extension requirements have not been imposed on other cable operators in Vermont and objects to the Department’s use of its profitability, history of line extension completions, and prior construction budgets as a basis for imposing additional obligations on Comcast.

The Board has determined to adopt the Department’s proposed condition with respect to additional line extensions and will include this condition in the new CPG. It finds that the Department’s recommendation is supported by the needs and interests of the state for additional line extensions to increase the availability of service in rural and other unserved areas of the state and that it is reasonable after taking into account the costs of meeting such needs and interests. As the Board previously stated in another cable CPG renewal proceeding:

In granting certificates of public good to cable companies, one of the major goals of this Board is to ensure service to as many customers as possible. Many Vermont residents find cable services to be valuable, but if service is limited to a few densely populated areas, Vermonters outside of those areas fail to benefit. Thus, inherent in the principle of the public good is an obligation to make service available to as many customers as possible within a company’s service territory. The Board embodied this principle in Rule 8.214(B), which requires that in reviewing certification petitions we consider maximizing service availability.¹²²

In the Docket 7077 Order approving the acquisition of Adelphia’s systems and the issuance of the Existing CPG, the Board reaffirmed the vital need for more line extensions in the state as it emphasized the particular importance, in determining to grant the Existing CPG, of Comcast’s commitment to assume all the unfinished line extension obligations of Adelphia.¹²³

When considering the obligations of a cable operator for further line extensions, it is also necessary to consider the financial viability of the service extensions for the cable operator. In its testimony and briefs, the Department emphasizes the substantial profitability of Comcast’s operations in Vermont (during a period when Comcast completed 1430 miles of line extensions) and the number of miles of lines extensions set forth in Comcast’s annual construction budgets. In the Board’s view, the Department’s emphasis on these matters is not intended to provide the basis

121. Comcast Reply Brief at 7 8.

122. Docket 6101, Order of 4/28/00 at 113.

123. Docket 7077, Order of 12/29/05 at 34.

for its proposed line extension requirement, as Comcast suggests, but rather is directed at establishing the financial viability of its proposal to require Comcast to help meet an important state need, as a condition of its franchise renewal, by constructing an average of 50 miles of line extensions per year over the term of the new CPG. The evidence presented by the Department is adequate to support the conclusion that the costs of the line extensions to Comcast will not impair Comcast's ability to provide service or to continue to earn a fair and reasonable return on its investments.

The Department had originally recommended, in addition to other line extension conditions it abandoned in its final proposal, that Comcast be required to build at least 50 miles of line extensions in each of the 11 years of the renewal term.¹²⁴ It is now proposing that 550 miles of line extensions be constructed over the entire term of the new CPG. The current proposal affords Comcast some flexibility in determining where, when, and how to meet its line extension obligations over the term of the CPG. Although there is no specific requirement with respect to annual line extensions, the Board would expect reasonable progress toward the overall goal over the course over the CPG's term such that, for example, three years from now Comcast will have completed between 100 and 200 miles of line extensions under this condition.

(4) Customer Service Terms - Existing CPG Conditions 44-59 and Proposals

198. Comcast's CPG Proposal retains the customer service and customer notice conditions in the Existing CPG (except for the omission of one condition related to rate-change notices filed with the Board) with modifications to several of the remaining conditions. Comcast's CPG Proposal at 9-12; Existing CPG at 19-22.

199. The Department supports the inclusion of the customer service and subscriber notice conditions included in Comcast's CPG Proposal, with minor modifications to one condition that Comcast accepts. Peterson pf. at 5; Glanville reb. pf. 2; DPS Brief at 27-28; Comcast CPG Proposal at 10; Comcast Reply Brief at 4.

Discussion of customer service and subscriber notice terms

Comcast's compliance with the customer service and subscriber notice terms of its existing CPGs is addressed in findings 31 to 34 above. There appear to be no remaining disagreements

124. Chase reb. pf. at 5

between the Department and Comcast regarding proposed modifications to the terms of the existing conditions related to customer service and subscriber notices. None of the customer service conditions of the Existing CPG involve PEG issues except for condition 49 of the Existing CPG. VAN agrees with the modifications of existing condition 49 proposed by Comcast.

The Board finds these proposed terms to be reasonable in light of community needs and interests except for the proposed change in condition 53 of the Existing CPG that would increase the reading level for customer notices from a sixth-grade level to a twelfth-grade level.¹²⁵ There is no explanation for the proposed change in the record or in the parties' briefs. It is not appropriate to propose increasing the reading levels for customer notices by six grade levels without an explanation in the record of the reasons for making this change. The condition included in the CPG will retain the existing requirement that customer notices be in plain English at no greater than a sixth-grade reading level.

(5) Institutional Networks – Existing CPG Conditions 60-65 and Proposals

200. Comcast's CPG Proposal omits all the conditions in the Existing CPG related to institutional networks. VAN proposes to retain the existing conditions with one change. Comcast's CPG Proposal; exh. LGD-10 (updated 9/2/16) at 31-34.

Discussion of conditions related to institutional networks

Although Comcast does address proposals of VAN for a statewide PEG connectivity through an institutional network, Comcast does not provide an explanation in the evidentiary record of its reasons for omitting all the conditions contained in the Existing CPG related to institutional networks in Comcast's CPG Proposal.¹²⁶ In its reply brief, it states its opposition to

125. Condition 53 of the Existing CPG provides:

53. Comcast shall ensure that all customer notices are in plain English, at no greater than a sixth grade reading level, and that type sizes and layouts are sufficient to render the notices readable to the average consumer. The Flesch Kincaid Reading Level test, or equivalent instrument that may widely supersede it, shall be used to determine compliance with the grade level requirement.

Under Comcast's CPG Proposal, the first sentence of the condition would read:

Comcast shall ensure that all customer notices are in plain English, **at no greater than a twelfth-grade reading level**, and that type sizes and layouts are sufficient to render the notices readable to the average consumer. (Emphasis added.)

126. In responding to VAN's earlier proposal on institutional networks, Mr. Glanville's rebuttal testimony suggests that the existing institutional network conditions are unnecessary and duplicative. Glanville reb. pf. at 24.

VAN's "new attempt to insert these conditions" from the Existing CPG, objects to VAN's mischaracterization of the existing conditions, and observes that these conditions pertain to request for proposals for institutional networks that have not been included in other renewed CPGs.¹²⁷ In light of VAN's support for the retention of these conditions and the absence of compelling reasons to omit the existing institutional network conditions from a renewed CPG, the Board will retain these conditions in the renewed CPG. VAN's minor change to the existing conditions, the deletion of what appears to be a superfluous sentence in condition 61 of the Existing CPG, does not change the substance of the conditions, and is also adopted by the Board.

(6) Miscellaneous -- Existing CPG Conditions 66-73 and Proposals

201. Comcast upgraded the Newport system to 750 MHz bandwidth in 2010 and has otherwise substantially complied with condition 67 of the Existing CPG. Glanville pf. at 8; Glanville reb. pf. at 34.

Existing CPG Condition 68 – Internet Service

202. Comcast's CPG Proposal omits condition 68 of the Existing CPG. Both the Department and VAN oppose this omission. The Department proposes to retain the current condition without modification, while VAN proposes modifications which are intended, among other things, to clarify what is meant by commercial class internet service. The existing condition provides as follows:

68. Comcast shall provide each AMO and each school, public library, and municipality within its service area with a cable modem and Internet access at no charge. The Internet service provided to an AMO's base production facility shall be commercial-class service.

Glanville reb pf at 13-14 and 33; Chase pf. at 16-17 and reb. pf. at 7; Mobley pf. at 25; exh. LGD-10 (updated 9/2/16) at 35; Comcast's CPG Proposal; DPS Brief at 28.

203. Comcast objects to inclusion of any condition in a CPG requiring the provision of internet service as being outside the scope of a cable television franchise. Comcast would voluntarily agree to a condition to provide Internet access to each AMO base production facility. Comcast may

127. Comcast Reply Brief at 14 15.

continue to provide internet service to schools and public libraries voluntarily as part of its commitment to community investment. Glanville reb. pf. at 13-14.

204. The Department believes that Comcast should continue to provide internet access to AMOs, schools, libraries and municipal buildings as required in the Existing CPG. Chase reb. pf. at 7; DPS Brief at 28.

205. Comcast understands that there is a long-standing history of including CPG conditions requiring cable television operators to provide internet service to schools, libraries, municipalities, and AMO production facilities within their service area. Glanville reb. pf. at 13.

206. In connection with Comcast's obligations with respect to the development of digital file sharing capabilities among the AMOs for the Vermont Media Exchange (VMX) under condition 20 of the Existing CPG and its obligations to the AMOs under condition 68 of the Existing CPG, Comcast agreed to provide each AMO that participates in VMX file sharing "with a commercial high speed data account and service support subject to conventional commercial usage terms." VAN proposed a small business basic high speed internet connection as being sufficient in 2006 to provide adequate capacity for digital file sharing among the AMOs. Exh. DMG-14 at 2; exh. DMG-15 at 7 and 11.

207. Comcast has not provided additional support for the VMX over the past ten years. The internet service currently provided by Comcast to the AMOs does not begin to address the current needs of modern PEG facilities in Vermont. AMOs throughout the state have found that the business starter internet they receive from Comcast does not provide the necessary speeds to both upload and download the larger digital files that are now common to and from the VMX. As a result, some AMOs have stopped using the VMX or have decided to pay for higher levels of service from Comcast or other providers. Mobley pf. at 25; Chapman pf. at 38-39; Crawford reb. pf. at 14.

208. VAN does not believe that the basic business starter internet service that Comcast currently provides the AMOs would now be regarded as "commercial class service or a "commercial high speed data account." Comcast markets this service as ideal for only one to three users. The connection speeds provided by Comcast's basic business class service is now

comparable to the speeds offered in the lower third of Comcast's residential internet plans. Mobley pf. at 24; Chapman pf. at 39; Crawford reb. pf. at 14.

Discussion of internet access requirements

As Comcast acknowledges, there is a long history in Vermont of requiring cable companies to provide internet access to schools, libraries, and AMOs in Vermont to meet reasonable community needs and interests. The Board sees no reason to revisit this condition of Comcast's existing CPGs in connection with Comcast's requested CPG renewal. The Board agrees with the Department that the inclusion of the current condition in the new CPG will promote community needs and interests at relatively little expense to Comcast.¹²⁸ Accordingly, the Board will include the existing condition in the CPG in its current form.

Comcast and VAN disagree about what is meant by the term "commercial class service" in the current condition. The Board agrees with VAN that the requirement for commercial class internet service is linked to Comcast's obligation to enable digital file sharing among the AMOs by providing interconnection bandwidth as Comcast acknowledged in 2007.¹²⁹ The Board also agrees with VAN that the meaning of the term "commercial class service" is not fixed in time by the meaning it had in 2005, but needs to be considered in the context of current technologies and needs.

Although "commercial class service" was not defined in the Existing CPG, it is clear that a basic business internet starter package for up to three users or devices does not meet the definition of "commercial class service" in 2016. This is especially true in view of the known needs of the AMOs for digital file sharing (which Comcast is obligated to enable under the Existing CPG) to upload as well as download larger digital data files as part of the VMX.

128. DPS Brief at 17.

129. Condition 20 of the Existing CPG provides the option for Comcast to meet its obligations under the condition by providing "interconnection bandwidth" to "enable digital file sharing between AMOs." Existing CPG at 6. In a letter to VAN dated January 7, 2007, related to the establishment of a statewide interconnect for digital file sharing, Comcast stated:

In satisfaction of its commitment under Condition 20 and Condition 68, Comcast shall provide each participating AMO a commercial high speed data account and service support subject to conventional commercial usage terms.

Exh. DMG 14 at 2.

VAN proposes that Comcast be required to provide internet service “with upload and download speeds equivalent to those offered in Comcast’s highest tier business internet plan.” The Board has insufficient knowledge of whether such a plan would exceed the level of service required to enable effective and efficient digital file sharing for the AMOs. However, both Comcast and the AMOs are in a much better position to determine what higher level business internet package provides appropriate “commercial-class service” for the AMOs both in terms of the number of users and devices and the upload and download speeds required for effective and efficient digital file sharing. Given the hybrid fiber cable connections that already exist to AMO base production facilities, the marginal cost to Comcast of providing such service to the AMOs would appear to be negligible. On the other hand, the cost of upgrading internet service to a level that permits effective and efficient digital file sharing would not be insignificant for some of the smaller Vermont AMOs, which may be the principal reason some AMOs have stopped participating in the VMX.

Based on the foregoing, the Board determines to retain the internet access condition from the existing CPGs in its current form, with the understanding that the “commercial class service” to be provided by Comcast to the AMOs will provide adequate upload and download speeds to enable efficient and effective digital file sharing among the AMOs.

Existing CPG Condition 69 – Advance Notice of Rebuilds and Upgrades

209. Comcast’s CPG Proposal omits condition 69 of the Existing CPG related to advance notice of all rebuilds and upgrades of Comcast’s system in Vermont. VAN opposes the omission of this existing condition and proposes to modify the existing condition to replace references to construction with references to planned changes or upgrades. The existing condition provides as follows:

69. Comcast shall provide the Board, the Department, affected municipalities, and affected AMOs with complete descriptions of all rebuilds and upgrades at least 90 days prior to the commencement of construction, and in all cases sufficiently in advance to allow time for meaningful comments and possible integration of those comments into the construction project.

Byer pf. at 29-30 and reb. pf. at 11; Comcast’s CPG Proposal; exh. LGD-10 (updated 9/2/16) at 35.

210. VAN maintains that Comcast should be expected to notify affected municipalities and AMOs of all rebuilds and upgrades so as to address issues related to PEG access and to ensure attention to community needs and CPG requirements. VAN continues to believe that it is vital to have meaningful conversations with Comcast regarding changes they have made, or plan to make, that could affect PEG services. The importance of such advance notice is underscored by the fact that after the digital upgrade of Comcast's Vermont system, AMOs were no longer able to list their programming on an on-screen programming guide. Campitelli pf. at 31-32; Byer pf. at 29-30 and reb. pf. at 11.

211. Comcast maintains that the existing condition may have been appropriate in an era when large-scale rebuilds and upgrades, requiring months of planning and construction, of cable television systems were necessary. However, Comcast contends that the need for this condition is outdated in an era where changes in software, equipment, and electronics occur quickly and take place "behind the scenes." Glanville reb. pf. at 34-35.

Discussion of condition requiring advance notice of system rebuilds and upgrades

The Board agrees with VAN that the existing condition requiring advance notice of system rebuilds and upgrades should be retained with minor modifications. In its reply brief, Comcast advances the argument that the existing condition was intended to apply only to rebuilds or upgrades requiring construction.¹³⁰ The Board agrees that the existing condition is not entirely clear. One could construe the reference to "construction" as implying that the condition applies to traditional construction activities such as the rebuilds of lines and headend facilities. However, the reference to upgrades would also seem to include software and equipment upgrades, such as were involved in Comcast's digital network enhancement project and its X 1 entertainment system. In the Board's view, the second interpretation is the more appropriate one. Given the effects of some of the significant system upgrades made by Comcast during the terms of the existing CPGs, the Board determines it is appropriate to modify the existing condition to eliminate any uncertainty.

The Board is concerned, however, that the terms of the existing condition would require Comcast to provide advance notice of any rebuild or upgrade regardless of its significance. The

130. Comcast Reply Brief at 20-21.

Board believes it is reasonable to limit such an advance notice requirement to material rebuilds and upgrades. Accordingly, the Board will include the following condition in a renewed CPG:

Comcast shall provide the Board, the Department, affected municipalities, and affected AMOs with complete descriptions of all material system rebuilds and upgrades at least 90 days prior to the planned changes commencement of construction, and in all cases sufficiently in advance to allow time for meaningful comments and possible integration of those comments into the planned rebuilds and upgrades.

For purposes of this condition, materiality shall be determined by the significance of such rebuilds and upgrades in terms of the effects on any of the following: Comcast's existing system in Vermont; Comcast's ability to serve and offer products and features to customers and potential customers; PEG channels and AMOs; any existing CPG obligation of Comcast; any obligation of Comcast under applicable law; local communities; public rights of way; and the State of Vermont generally.

Existing CPG Condition 72 – Reports on Services Provided in New England Region

Comcast's CPG Proposal omits condition 72 of the Existing CPG related to annual reports by Comcast on services that are provided in the New England region that are not available in Vermont. VAN oppose the omission of this existing condition and proposes to modify the existing condition to add VAN to the list of entities that would receive such reports. The existing condition provides as follows:

72. At least annually, Comcast must report to the Board and the Department on services that are being provided to customers of Comcast systems in the New England region but that are not available to Vermont customers. If some services are available to one-half or more of Comcast's non-Vermont customers in the New England region that are not offered in Vermont, the Department may petition the Board to require Comcast to either justify the disparity or make those services available here.

Comcast's CPG Proposal; exh. LGD-10 (updated 9/2/16) at 35.

212. VAN suggests that the retention of existing condition 72 as modified by VAN will provide knowledge and help assure that Vermonters have access to new and improved cable services and that a requirement to provide such reports to VAN, as well as the Department and the Board, will facilitate thoughtful discussions with regulators, AMOs and advocacy groups. Byer pf. at 30-31; Campitelli pf. at 32.

213. Comcast contends that its track record in Vermont demonstrates Comcast is committed to providing its Vermont customers with the full array of Comcast services. Comcast also states that a Comcast customer in Vermont enjoys the same advanced video services enjoyed by Comcast customers in New England and across the United States. Glanville reb. pf. at 35.

Discussion of condition for reports on services in the New England region

In its brief, VAN acknowledges that Comcast is innovative and willing to bring its innovations to Vermont when market conditions dictate.¹³¹ Comcast notes that there were concerns prior to Comcast's acquisition of the Adelphia systems that the full array of Comcast services would not be available to its Vermont customers on an ongoing basis. Comcast believes that its track record in Vermont over the terms of its existing CPGs in providing its Vermont customers with advanced video services has relieved such concerns.

The Board tends to agree with Comcast's position on this matter and believes that this condition is no longer as necessary as it seemed in 2005. In addition, there are other methods by which the Department or VAN can identify services that Comcast provides in the New England region that are not available in Vermont. It seems an unnecessary, though admittedly minor, burden on Comcast to require it to file reports each year on such services provided in the New England region that are not provided in Vermont. Accordingly, the Board will not include the existing condition in a renewed CPG.

Existing CPG Conditions 66, 70, 71, and 73

214. Comcast's CPG Proposal also omits conditions 66, 67, 70, 71, and 73 that are included in the miscellaneous terms of the Existing CPG. Comcast's CPG Proposal; Existing CPG at 24-26.

215. The Department does not object to the omission of these existing conditions in a renewal CPG. VAN expresses no view as to the omission of these conditions because it regards them as involving non-PEG issues. DPS Brief at 27; exh. LGD-10 (updated 9/2/16) at 34-36.

131. VAN Brief at 58.

Discussion of omission of Existing CPG conditions 66, 67, 70, 71, and 73

Condition 67 of the Existing CPG relates to upgrades to facilities in Newport, Vermont, that Comcast completed several years ago. No party objects to the omission of conditions 66,¹³² 70,¹³³ 71,¹³⁴ and 73,¹³⁵ and the Board finds the removal of these conditions in a renewal CPG to be acceptable. Accordingly, these conditions will not be included in a renewal CPG.

(7) Proposed New Senior Discount Condition

216. The Department proposes a new condition for the renewed CPG to provide a discount on limited basic service for some senior citizens. The proposed condition provides as follows:

Comcast shall provide a discount for senior citizens, 65 years of age or older that receive supplemental social security benefits, for its Limited Basic Tier service in the amount of \$2.00 per month or 10% of the Limited Basic Tier charge per month, whichever is greater. The foregoing condition shall not require Comcast to offer such discount on the Limited Basic Tier component of any package that includes both the Limited Basic Tier service and any other video tier or service.

Peterson pf. at 6; DPS Brief at 29.

217. Comcast does not currently offer a senior citizen discount, but many senior citizens struggle to afford the increases in Comcast's cable rates. Peterson pf. at 6.

132. Condition 66 of the Existing CPG provides as follows:

66. Subject to applicable law, including statutes governing or rules and regulations promulgated by the Federal Communications Commission, Comcast shall respond to and negotiate with any digital broadcast service broadcasting in Vermont, including but not limited to any service that provides High Definition TV or Standard Definition TV multicast services, commercially reasonable terms for the carriage of such services on Comcast's system. This condition requires Comcast to use its best efforts to reach agreement on such terms but does not require that Comcast reach agreement for such carriage.

133. Condition 70 of the Existing CPG provides as follows:

70. Comcast shall continue to provide FM radio rebroadcast service in all systems in which it was provided by Adelphia prior to acquisition. Comcast shall not discontinue FM rebroadcast service except on 45 days notice to the Board and Department.

134. Condition 71 of the Existing CPG provides as follows:

71. Comcast shall provide a channel with a reasonable amount of Vermont related programming on its Vermont systems.

135. Condition 73 of the Existing CPG provides as follows:

73. Comcast shall discuss major changes in the delivery of customer service and other aspects of operations, such as installation and repair and system architecture, with the Board and Department prior to finalizing plans and in sufficient time for meaningful input from regulators. Comcast shall inform the Board and Department in writing of major changes in the delivery of customer service and other aspects of operations at least 30 days prior to implementation.

Discussion of Department's Senior Discount Proposal

The Department recommends that Comcast be required to offer a discount to senior citizens. Specifically, the Department recommends that the Board adopt a condition which mirrors a CPG condition from the renewed cable television CPG that the Board issued in Docket 7820 to Charter. Comcast does not currently offer a senior discount, and the Department's CNA would suggest that the high cost of service is a barrier for many Vermonters who would like to have or retain cable service through Comcast.

Comcast opposes the Department's condition. Comcast argues that the imposition of this condition by the Board without Comcast's agreement would amount to rate regulation by the Board.¹³⁶ Comcast notes that the senior discount condition in Docket 7820 resulted from a memorandum of understanding among the cable operator, the Department, and VAN.

Although it may agree to provide such a discount in a settlement or may decide to offer it voluntarily, Comcast maintains that the Department's proposed senior discount condition cannot be imposed on it without its consent because such a discount requirement would involve the unauthorized regulation of rates by the Board. Comcast's argument may be rebuttable, but it is not implausible. However, the Department did not respond to Comcast's rate regulation argument in its briefs. Accordingly, the Board does not adopt this condition for inclusion in the renewed CPG. Comcast may, of course, voluntarily offer such a discount to seniors in Vermont.

G. CPG Criteria Not Addressed Elsewhere

[30 V.S.A. § 504(b)(4) & (5); PSB Rule 8.214(B)(5) & (9)]

(1) Basic Services in a Competitive Market

218. Comcast provides basic services in a competitive market. This finding is supported by findings 219 through 222 below.

219. The FCC has determined that there is effective competition throughout Comcast's service territory in Vermont. Exh. CRC-2 at 50.

220. Satellite television companies and, in some areas, telephone companies offer broadcast and other television network channels in Vermont that compete with the cable television services

136. Comcast Brief at 37; Comcast Reply Brief at 6.

provided by Comcast. In addition, Vermonters may be able to obtain over-the-air access to locally broadcast television channels. Glanville pf. at 19.

221. A variety of video providers, such as Netflix and Hulu, that deliver content over the internet also provide video programming choices in Vermont that compete with those offered by Comcast. Glanville pf. at 19.

222. Comcast offers a limited basic tier of service, which can be purchased as a stand-alone package. Glanville pf. at 19; exh. DMG-9.

223. The Department's CNA report indicated that the high cost of cable service is a common reason that customers either choose not to purchase or end service with Comcast. Exh. CP-1 (Attachment D at 12 and 15).

Discussion re Competitive Market

The Board is bound by the determination of the FCC that there is effective competition to Comcast throughout its service territory in Vermont.¹³⁷ Vermont customers can subscribe to basic cable television service from Comcast without purchasing other services.

(2) Discrimination Among Customers of Basic Service

224. Comcast does not discriminate among customers of basic service. This finding is supported by findings 225 and 226 below.

225. Comcast does not discriminate against any customer in the availability of customer service. Glanville pf. at 9.

226. Comcast currently offers promotional discounts to consumers in compliance with federal and Vermont law. Glanville pf. at 9.

(3) Logical Fit with Neighboring Systems

227. Comcast's system is a logical fit with neighboring systems. This finding is supported by findings 228 and 229 below.

228. Comcast operates its system for the provision of cable services with a headend and hub design structure. Glanville pf. at 19.

137. 47 U.S.C. § 543(a)(2). "If the [FCC] finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the [FCC], a State or franchising authority under this section."

229. Comcast's service signals are received at headend, transmitted to hubs, and distributed to Comcast customers throughout Vermont and across New England utilizing this interconnected system architecture design, with enhanced system reliability, and redundancy. Glanville pf. at 19.

VII. CONCLUSION

Based on the findings and discussion above, and following consideration of applicable criteria under state and federal law, the Board determines, pursuant to 30 V.S.A. §§ 231, 503, 504, and 506, that the issuance to Comcast of a renewed and consolidated CPG, subject to the terms and conditions adopted by the Board in this Order, for the ownership and operation of a cable television system in the State of Vermont will promote the general good of the state.

VIII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont ("Board") that a renewed and consolidated certificate of Public Good to own and operate a cable television system in Vermont shall be issued to Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, d/b/a Comcast, on the terms and subject to the conditions approved by the Board in this Order and set forth in the Certificate of Public Good accompanying this Order.

Dated at Montpelier, Vermont, this 13th day of January, 2017.

<u>s/James Volz</u>)	
	)	PUBLIC SERVICE
)	
	)	BOARD
)	
	)	OF VERMONT
<u>s/Sarah Hofmann</u>)	

OFFICE OF THE CLERK

FILED: January 13, 2017

ATTEST: s/Judith C. Whitney
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E mail address: psb.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and Order.

ATTACHMENT 2

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8301

In Re: Renewal of the Certificate of Public)
Good of Comcast of Connecticut/Georgia/)
Massachusetts/New Hampshire/New York/)
North Carolina/Virginia/Vermont, LLC, d/b/a)
Comcast, expiring on December 29, 2016, to)
provide cable television service)

Entered: 1/13/2017

RENEWED AND CONSOLIDATED CERTIFICATE OF PUBLIC GOOD
ISSUED PURSUANT TO 30 V.S.A. §§ 231, 503, 504, AND 506

IT IS HEREBY CERTIFIED that the Public Service Board (“Board”) of the State of Vermont on this date finds and adjudges that the issuance of a renewed Certificate of Public Good (“Certificate” or “CPG”) to Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, d/b/a Comcast (“Comcast” or the “Company”), to serve the cities, towns, or gores of Addison, Albany, Andover, Arlington, Athens, Avery’s Gore, Bakersfield, Baltimore, Barnard, Barton, Belvidere, Bennington, Benson, Berkshire, Berlin, Bethel, Braintree, Brandon, Brattleboro, Bridgewater, Bridport, Brighton, Bristol, Brookfield, Brookline, Brownington, Burlington, Cabot, Calais, Cambridge, Castleton, Cavendish, Charleston, Charlotte, Chester, Chittenden, Clarendon, Colchester, Cornwall, Coventry, Craftsbury, Danby, Derby, Dorset, Dummerston, Duxbury, East Montpelier, Eden, Elmore, Enosburgh, Essex, Fair Haven, Fairfax, Fairfield, Ferdinand, Ferrisburgh, Fletcher, Franklin, Georgia, Glastenbury, Glover, Goshen, Grafton, Grand Isle, Greensboro, Guilford, Halifax, Hancock, Hardwick, Hartford, Hartland, Highgate, Hinesburg, Holland, Hubbardton, Huntington, Hyde Park, Ira, Irasburg, Jamaica, Jay, Jericho, Johnson, Killington, Landgrove, Leicester, Lewis, Lincoln, Londonderry, Lowell, Ludlow, Manchester, Marlboro, Marshfield,

Mendon, Middlebury, Middlesex, Middletown Springs, Milton, Monkton, Montgomery, Montpelier, Moretown, Morgan, Morristown, Mt. Holly, Mt. Tabor, New Haven, Newark, Newport City, Newport Town, North Hero, Norwich, Pawlet, Peru, Pittsfield, Pittsford, Plainfield, Plymouth, Pomfret, Poultney, Pownal, Proctor, Randolph, Reading, Richford, Richmond, Ripton, Rochester, Rockingham, Roxbury, Rupert, Rutland City, Rutland Town, Salisbury, Sandgate, Searsburg, Shaftsbury, Sharon, Sheffield, Shelburne, Sheldon, Shrewsbury, South Burlington, South Hero, Springfield, St. Albans City, St. Albans Town, St. George, Stamford, Stannard, Starksboro, Stockbridge, Stowe, Strafford, Stratton, Sudbury, Sunderland, Sutton, Swanton, Thetford, Tinmouth, Troy, Underhill, Vergennes, Vernon, Walden, Wallingford, Waltham, Wardsboro, Warner's Grant, Warren's Gore, Waterbury, Waterville, Weathersfield, Wells, West Haven, West Rutland, West Windsor, Westfield, Westford, Westminster, Westmore, Weston, Weybridge, Wheelock, Whiting, Williston, Windham, Windsor, Winhall, Winooski, Wolcott, Woodbury, Woodford, Woodstock, and Worcester, and the operation of a cable system in said cities, towns, and goes will promote the general good of the State of Vermont subject to compliance with the following conditions:

General Terms

1. This Certificate shall expire on December 29, 2027.
2. This Certificate shall be subject to revocation upon good cause, including a substantial or continuous failure to abide by its material terms or the representations contained in the petition and application.
3. This Certificate may not be transferred without the consent of the Board.
4. For the duration of this Certificate, Comcast shall designate a Regulatory Affairs staff person to serve as a primary liaison to the Consumer and Public Information Division ("CPI") of the Vermont Department of Public Service ("Department") and whose responsibilities shall include oversight of Comcast's compliance with Vermont statutes, rules, orders and other regulations governing cable operators.
5. Comcast shall file tariffs and all individual customer agreements for its cable services with the Board to the extent required by Vermont law.

6. For the purpose of calculating the gross revenue tax under 30 V.S.A. § 22, Comcast shall use the following definition of gross revenues: all cash, credit, property of any kind or nature, or other consideration received directly or indirectly by Comcast derived from the operation of its cable systems to provide cable service in Vermont including, but not limited to, monthly fees charged to subscribers for basic service; monthly fees charged to subscribers for any optional service; pay television fees; pay-per-view fees, premium-service fees, monthly fees charged to subscribers for any tier of service other than basic service; installation, disconnection and reconnection fees; late fees charged to subscribers; leased-channel fees; fees, payments or other consideration received from programmers other than programming launch fees; fees, payments or other consideration received from third parties for lease of space on either fiber or coaxial cable; converter rentals or sales; studio rental, production equipment and personnel fees; advertising revenues; revenues from home shopping networks; and revenues from internet access service until such time that a gross revenue tax is paid on such revenues as telecommunications services.

7. For purposes of calculating funding for Public, Educational, and Governmental (“PEG”) access in the absence of an agreement otherwise, Comcast shall use the definition of gross revenues in the preceding paragraph except that internet-access service revenues shall be excluded from the calculation unless and until Congress, the Federal Communications Commission (“FCC”), or a court of competent jurisdiction or governmental agency of competent jurisdiction issues a final ruling or order, not subject to appeal, that such revenues shall be included in such a calculation of gross cable-service revenues.

8. Comcast shall not itemize on subscriber bills the Vermont gross revenue tax, imposed on Comcast pursuant to 30 V.S.A. § 22, unless Vermont law allows such itemization.

9. On at least an annual basis, Comcast management with responsibility for Vermont operations shall invite city and town government officials in each of the cities and towns in its cable systems to meet for the purpose of exchanging information about community needs and the Company’s plans. These meetings shall be conducted on a system-wide basis and the PEG Access Management Organization (“AMO”) or AMOs serving that system shall also be invited to these meetings. For smaller systems, such meetings may be held under the auspices of a

regional planning commission or other appropriate regional entity. The Company shall submit summaries of these meetings, including the recommendations made by participants and the Company's response, to participants, the Board and the Department.

10. Comcast shall at all times provide a reasonable quality of service, having regard to FCC minimum service standards, available technology, subscriber interest, and costs. Comcast shall at all times offer a reasonably broad range of programming, having regard to available technology, subscriber interest, the revenues and potential revenues of the systems, and costs. The Board shall, to the extent permitted by law, retain jurisdiction to prescribe broad categories of programming.

11. Prices for services not subject to rate regulation shall at all times be reasonable, having regard to the costs of providing such services.

12. If Comcast does business in the State of Vermont under any name other than the name in use on the date of this Certificate, it shall file a notice of the new tradename, along with a copy of its Vermont Secretary of State's tradename certificate, with the Clerk of the Board and the Department thirty (30) days prior to doing so.

13. At the time of filing its Annual Report pursuant to 30 V.S.A. § 22, Comcast shall also file with the Board the following:

- (1) Comcast's PEG Access Report;
- (2) a report of all written consumer complaints and notations regarding oral and telephone complaints received during the preceding calendar year or annual period;
- (3) a map sufficiently outlining the service territory and describing its existing plant and any extensions and replacements planned for commencement or completion within one calendar year from the close of the preceding calendar year or annual period. The map shall also be provided in one of the standard electronic formats: Arc View shapefile (.SHP) or geodatabase (.MDB) formats (preferred); Arc/Info Interchange (.E00) format; MapInfo Interchange (.MIF) format; Microstation (.DBN) format; or AutoCAD (.DWG or .DXF) formats. The map should depict the roads where cable plant exists and identify the proposed coordinate system of the electronic map file;
- (4) a listing of cable services, the rates charged for each cable service as of the date of the filing of the report, a statement of any changes in any such rates from the preceding calendar year or period, and a statement of the revenue derived from each cable service during such calendar year or annual period;

- (5) a statement of significant changes to be implemented during the current calendar year or annual period in Comcast's business structure, operating procedures, and cable services to be offered;
- (6) a balance sheet, an income statement, a statement of changes in financial condition, and a statement of assets used and useful for the provision of cable service in Vermont, all as of the close of the preceding calendar year or annual period;
- (7) the annual calculation of qualifying density ("H") for the purpose of Comcast's line-extension policy in accordance with the formula set forth in the Orders in Docket 6101 and condition 34 below; and
- (8) the information, as set forth in condition 31 below, related to channels included in Comcast's digital starter tier and the penetration of high definition service among its Vermont customers.

14. Comcast shall at all times comply with Vermont law and all applicable regulations, as they may be amended from time to time.

15. Comcast shall comply with all FCC regulations.

PEG Access

16. Comcast shall designate one or more AMOs as provided in Rule 8.400. Comcast shall provide levels and types of financial, operational, and technical support to those AMOs that are fair and reasonable and in compliance with applicable law.

17. Comcast shall file with the Board and Department copies of all PEG-access contracts with AMOs, and any amendments thereto, within 30 days of execution.

18. Comcast must work with the relevant AMO prior to any PEG-access-channel reassignment and shall pay the access entity's reasonable costs of such reassignment. Comcast shall not reassign a PEG access channel without advance warning and consultation with the AMO.

19. Comcast shall continue to provide interconnection bandwidth to AMOs to enable digital file sharing between AMOs and the ability for AMOs to distribute programs to Comcast subscribers in its Vermont territories. Comcast shall also provide such other appropriate support to assist in the development and operation of a statewide PEG access channel as determined through future negotiations and proceedings. Among the issues related to a statewide access channel that remain to be resolved are the designation of a statewide AMO, the nature of the

channel, its structure, capabilities, and capacity, the source of funding for the construction and operation of such a statewide channel, remote origination sites for such channel, and appropriate interconnection with the cable systems of all cable operators in Vermont.

20. If the Board has designated an entity to act as a statewide PEG AMO Comcast will provide, at minimum, upon request of such AMO, a statewide PEG network with sufficient capacity and capability to (a) transmit signals from the statewide network to any PEG forward channel and (b) transmit to the statewide network signals originating on any PEG reverse channel on the cable system. Any such request for statewide PEG-network capability is to be made at least one year prior to activation of the statewide channel on a Comcast system. Comcast shall not be obligated to pay for statewide PEG-programming content beyond its PEG-access obligations.

21. (a) Comcast shall provide a cable service drop at its expense to every school, library, and PEG Access studio, and to at least one municipal building in every municipality in which it is obligated to provide service, upon request of the school, library, PEG entity, or municipality. Comcast shall provide one service drop providing basic cable television at each such location. The installation and basic service required by this condition shall be without charge, subject to applicable law.

(b) Comcast shall also provide and maintain, upon the written request from the designated AMO and subject to applicable law, a fiber optic or coaxial cable drop for the upstream origination with adequate signal quality of PEG Access programming at any such school, library, PEG studio, municipal building, or other public building. Subject to applicable law, Comcast shall be responsible for the construction costs to such PEG Access origination sites. The AMO requesting such a PEG Access programming origination drop shall be responsible for the provisioning of the required modulators or transmitters/receivers. Comcast may employ various alternative technologies of its choice to provide PEG Access origination capability with adequate signal quality at any requested location, and will consult with the designated AMO concerning the technologies for such PEG Access programming origination drops.

(c) This condition does not require Comcast to provide drops for basic cable service or PEG Access programming origination to buildings that are neither passed by nor located within

500 feet of the cable plant, as reported in Comcast's annual report, unless the AMO is willing to pay Comcast the incremental cost of labor and materials beyond 500 feet in advance.

22. At a minimum, Comcast must provide the following PEG access outreach:

(1) fund semi-annual, quarter-page advertising in local newspapers promoting PEG access programming and functions;

(2) provide on-screen advertising and promotion of PEG access channel programming and facilities;

(3) make such modifications to its facilities, at its expense, as are necessary to allow AMOs to access Comcast's interactive programming guide so that all PEG channels designated by Comcast are able to have their schedules listed on the interactive programming guide (or any successor on-screen programming guide). All such modifications shall be completed no later than one year from the date of this Certificate; and

(4) respond to reasonable requests by AMOs to communicate with Comcast's subscribers. Any direct costs incurred by the Company due to such communications that are over and above those normally incurred by the Company shall be borne by the requesting AMO.

23. (a) If requested by an AMO, and subject to applicable law, Comcast shall provide, pursuant to a negotiated contract agreement with the AMOs, reasonable capital funding pursuant to PSB Rules 8.417(D) and 8.405.

(b) Comcast and each AMO shall reevaluate the digital equipment needs or other PEG access related cable system improvements at least twice during the term of this Certificate. Comcast shall provide additional capital funding for each such re-evaluation or upgrade based upon the criteria of Rule 8.405. If an agreement cannot be reached, the Board will exercise its authority under Title 30 or Rule 8.405(E) and open an investigation to consider the necessity and amount of the interim upgrade payments.

24. Comcast shall provide AMOs the ability to originate as many simultaneous live PEG programs on any part of its system as there are forward PEG channels on that part of the system. Comcast shall not be obligated to originate any quantity of simultaneous, system-wide broadcasts that exceeds the number of forward PEG channels activated in that part of the system with the smallest quantity of activated forward PEG channels.

25. The Company shall keep a current PEG Access Report on file with the Board. As allowed by Rule 8.420, Comcast may delegate to one or more AMOs the task of preparing PEG access Plans.

26. Board Rule 8.400 shall apply to Comcast, to any AMO with which Comcast may designate and contract, and to any organizations that seek Comcast's designation as an AMO. Comcast shall comply with Rule 8.400 as it may be amended from time to time. Total operating funding within each system served by one or more AMOs shall not exceed 5% of the Company's annual gross revenues earned in that cable system to provide cable service in Vermont. Unpaid balances owed by the Company shall earn interest at the legal rate (see 9 V.S.A. § 41a), commencing the day after the due date.

27. Comcast shall maintain PEG policies and procedures that ensure adequate and prompt resolution of technical and administrative matters that arise between Comcast and the AMO which include:

- (1) identification of the types of matters that are likely to arise in the future between the AMOs and Comcast and the urgency demanded by the respective matters;
- (2) designation of an appropriate Company liaison for each type of matter, on a system-by-system basis when necessary;
- (3) delineation of the responsibilities and authority of the designated Company liaison, including how that individual will be trained to handle the individual's role and time frames for response;
- (4) a mechanism for escalation of matters which have not been satisfactorily resolved by the liaison; and
- (5) a periodic review process for the AMOs and Comcast to jointly review the effectiveness of the procedures at least semi-annually.

28. Upon request of the AMO, a Comcast representative shall meet with the AMO's governing board. The Comcast representative must have sufficient authority to be able to make binding promises on behalf of the Company.

29. Comcast shall, at least once every two years, inform each municipality, school, library and AMO in every system subject to this Certificate of the opportunity to have remote origination service placed at the locations described in condition 21 above and offer to meet to: (1) determine each entity's need for remote origination service; (2) in the case of municipalities,

discuss the location(s) of such drop feed points within each municipality; and (3) negotiate the specific arrangements necessary for installation and maintenance of remote origination service. Comcast's correspondence will direct eligible institutions to contact their AMO to request remote origination service.

30. Upon request of an AMO, Comcast shall provide the AMO an in-house ability to control upstream signals from each remote origination site within the AMO's service territory.

31. Until such time as there is a requirement related to the activation of high definition ("HD") PEG channels on Comcast's systems in Vermont, Comcast shall provide the following information with the annual reports it files pursuant to 30 V.S.A. §§ 22 and 514:

1. the average number of HD channels and standard definition ("SD") channels on Comcast's digital starter tier (or its future equivalent) in its Vermont systems and the identity of all channels on such tier (other than PEG access channels) that are carried only on SD channels in Vermont; and

2. the percentage of its Vermont cable television subscribers who either subscribe to any of Comcast's digital services, such as digital economy or digital starter services, or whose subscription includes a HD digital converter that allows them to view HD channels with a limited basic or a expanded basic service subscription, or who subscribe to any service in the future that provides access to HD channels.

In addition, the Board will open a proceeding related to the activation of HD PEG channels on Comcast's systems in Vermont upon a request by the Vermont Access Network, the Department, Comcast, or any AMO designated by Comcast in Vermont that is filed at least two years after the issuance of this Certificate.

Line Extensions

32. With regard to requests for line extensions to provide cable service, Comcast shall abide by Board Rule 8.000, including Rule 8.313, and shall file a statement of the Company's policy on expansions of service into unserved areas as a tariff for the Board's approval.

33. Comcast shall construct no less than 550 miles of line extensions into uncabled areas during the term of this CPG. Comcast may satisfy this obligation either by fully funding the line extensions or by collecting contributions-in-aid-of-construction from customers pursuant to its line extension tariff. Any line extensions that are funded by a grant from any federal or state governmental agency shall not be used to satisfy this requirement. Comcast shall annually file

with the Board and the Department a report that details all line extensions completed during the prior calendar year. This report shall, at minimum, describe the length and location of all completed line extensions and the funding source for such extensions.

34. Line extensions shall be built on request without customer contribution in accordance with Comcast's line extension tariff based on an annual calculation of the minimum average number of verified subscribers per mile ("Qualifying Density" or "H") for the next calendar year. Comcast shall report the basis for its calculation of Qualifying Density with its Annual Report to the Department. The calculation shall be performed based on the formula set forth in the Board's Orders in Docket 6101 and shall use revenue data from the Annual Report to the Department and Comcast's average construction cost per mile for qualifying line extensions during the prior year as the assumed construction cost per mile. Comcast may use current data for all other parameters in the formula, including the carrying charge factor. To the extent possible, all elements of the formula should be based on the same time period. If audited financial statements are not available, Comcast shall use unaudited numbers. Any calculation of the Qualifying Density shall be subject to review by the Board.

Customer Service and Subscriber Notices

35. Comcast shall adhere to the customer service standards contained in 47 C.F.R. § 76.309.2.¹ The Company must monitor its customer service performance in relation to all FCC and Board customer service standards on a monthly basis. Comcast will maintain a service quality plan, developed in collaboration with the Department, to ensure effective monitoring and adherence to state and federal standards. Quarterly, the Company must submit these data to the Department and the Board.

36. Should consumer complaints to the Department concerning Comcast exceed a rate of 2.5 escalations per 1000 customers on a quarterly basis, Comcast must track and analyze consumer complaints in a manner that will enable their periodic analysis. "Escalation" is a complaint to CAPI in which, following investigation, CAPI staff determines reasonably there is something the Company should have done differently prior to the consumer having to contact the

1. All references to sections of 47 C.F.R. are intended to refer to those sections as they may be amended from time to time.

DPS for assistance. If this provision is triggered, on an annual basis, the Company must submit a report to the Department and the Board indicating the number and nature of complaints received, how they were analyzed by the Company, what systemic issues were identified, and what responses were implemented to address those systemic issues. Measurement of the consumer complaint rate to determine whether this provision is triggered shall be calculated on a quarterly basis. If this provision is triggered, the requirements of this provision will continue for a period of one year.

37. Comcast shall respond in writing to written inquiries from the Department regarding consumer complaints, the status of a line extension, and construction progress, with such responses to be received within fourteen calendar days to the extent reasonable. The fourteen calendar day period commences upon receipt by Comcast of the Department's written notification of an inquiry or complaint. Written notification includes notification by electronic mail, facsimile, hand-delivery or U.S. mail. In any case in which the Company is unable to respond fully within fourteen days, by providing all information necessary to resolve the inquiry or complaint within fourteen days, it must provide notice to the Department before the elapse of the initial fourteen days that an extension of time is required. Although the initial transmittal of the inquiry or complaint must be in writing, the Department and the Company are permitted to discuss the inquiry or complaint in person or by telephone. Responses that simply acknowledge receipt of the Department's inquiry do not satisfy the requirement. The fourteen day response expectation applies to all Department inquiries related to a case.

38. Comcast shall annually cause to be mailed to each of its subscribers a notice, approved by the Board, that:

- (1) states that the Board and the Department desire to hear the views of subscribers regarding the quality of services provided by Comcast and as to the reasonableness of the terms upon which such services are provided;
- (2) informs the subscribers how they may communicate their views to the Board, the Department, and to Comcast; and
- (3) provides the notices required by Board Rule 8.341 and 47 C.F.R. § 76.1602(b)-(c).

39. On or before January 30 of each year, Comcast shall certify to the Board, under oath, that it has distributed the notice(s) during the previous calendar year.

40. Comcast shall annually notify all subscribers of the complaint and appeal procedure for complaints against Comcast itself and against any PEG access administrative entity in Comcast's system.

41. Comcast shall provide outage credit and/or refunds to cable television customers without the necessity of the customer contacting Comcast in those instances in which Comcast knows a cable television outage has occurred and has affected a particular system or portion of a system. Comcast's outage-credit policies and practices shall at all times be consistent with Board Rule 8.343. For purposes of this requirement, "outage" shall mean a total loss of video and audio on all channels for more than twenty-four (24) consecutive hours.

42. Comcast shall treat all written complaints from subscribers in accordance with 47 C.F.R. § 76.1619(b) and Board Rule 8.345.

43. Comcast shall ensure that all customer notices are in plain English, at no greater than a sixth-grade reading level, and that type sizes and layouts are sufficient to render the notices readable to the average consumer. The Flesch-Kincaid Reading Level test, or equivalent instrument that may widely supersede it, shall be used to determine compliance with the grade level requirement.

44. Comcast shall provide customers at the time of any service order with a clear and understandable description of the terms, conditions, rates, and charges for all requested services and appropriate alternatives, which shall include the least-cost alternatives to the requested service. The Company shall disclose, at a minimum, any non-recurring charges, such as for installation, the recurring charges for services, any charges that apply to a change in service or periods in which such charges are waived and information about equipment, policies and procedures.

45. Comcast shall list the toll-free telephone number of the Department on its bills and in the "complaint procedures" section of its annual notices along with the following language: "You should first try to resolve any complaint or dispute directly with Comcast. If you remain unsatisfied by Comcast's response, you may request assistance from the Vermont Department of Public Service Consumer Hotline by calling 1-800-622-4496."

46. Comcast shall ensure that its “complaint procedure” and any other relevant sections of the annual notice provided to consumers in compliance with 47 C.F.R. § 76.102(b) identifies the “Vermont Public Service Board” as the local franchising authority for all Vermont systems.

47. Comcast shall at all times ensure that its annual customer notice is specific and detailed with respect to Vermont policies and procedures.

48. Comcast shall provide all customers at the time of installation with a clear, written notice complying with 47 C.F.R. § 76.1618 that the basic tier of service is available, its cost per month and a list of all services included in the basic tier.

49. Comcast shall ensure compliance with 47 C.F.R. § 76.309(c)(3), which requires that refund checks due to cable television customers shall be issued no later than (a) the earlier of the next billing cycle following resolution of the request or 30 days, or (b) the return of equipment supplied by the operator if service is terminated.

Institutional Networks

50. Comcast, or its duly designated agent, shall develop and submit a proposal within the time provided in a request for proposal (“RFP”), or if no time is specified then within 90 days, in response to any qualified RFP issued by a state or local government agency, educational institution (accredited elementary schools, secondary schools, colleges and universities and libraries open to the general public) or educational or governmental access entity (“institutions”) seeking an institutional network for voice, video or data within its franchised area. An RFP should permit a minimum of 90 days for response and shall be deemed qualified if it contains the following information: the specific locations to be linked (which may include interconnection points with other cable systems or telecommunications providers to be determined later); the desired transmission capacity or amount of dark optical fiber; and a description of the desired applications to be operated over the institutional network. Comcast, or its duly authorized agent, shall not be required to construct dedicated facilities for institutional networks, where facilities shared with other services and networks meet the requirements of the institutions. Fulfillment of an RFP involving dark fiber shall not require interconnection of that dark fiber with Comcast’s hybrid fiber coaxial grid or with any of the Company’s headends, nor shall the institution or the users have access to or rights in those headends. It is understood that Comcast will, at most,

lease dark fiber but not sell it. It is understood that Comcast may decline to fulfill an RFP requiring dark fiber if the necessary labor and/or material is unavailable or is not available on customary and satisfactory terms.

51. Comcast shall diligently perform its obligations in this Certificate with respect to institutional networks, but conditions may arise that prevent or delay its performance because of causes beyond Comcast's reasonable control including, without limiting the generality of the foregoing, flood, earthquake, hurricane, ice storm, blizzard, fire, explosion, war, riot, civil disturbance, labor disturbance, strike, sabotage, and restraint by court that, by exercise of due diligence and foresight, Comcast could not have been expected to avoid. If Comcast is rendered unable to fulfill any obligations by reason of such causes, it shall be excused from performing for the time and to the extent it is prevented or delayed from so doing, but shall exercise due diligence to correct such inability with all reasonable dispatch.

52. Comcast's, or its duly designated agent's, response to a qualified RFP shall include the terms and conditions, including but not limited to rates, tolls or charges, under which it would make available the institutional network to the requesting entity. Charges for institutional networks shall not exceed Comcast's, or its duly authorized agent's, fully-allocated costs, including a rate of return of 11.25%, to provide the network.

53. Comcast, or its duly designated agent, shall not charge institutions for construction or extension of facilities used for institutional networks that are required to meet other obligations under its Certificate or provide services to other customers, either directly or through an affiliate. Comcast, or its duly authorized agent, may charge institutions a proportional share of line extensions not otherwise required that will be used for institutional networks but may also be used to serve cable customers.

54. If Comcast submits a proposal in response to an RFP for an institutional network in accordance with condition 50 above, and that proposal is accepted by the requesting entity, then Comcast shall be obligated to provide service on the terms of the RFP or pursuant to the contract with the entity.

55. Comcast, or its duly designated agent, shall respond 24 hours a day, 7 days per week to outages or degradation of service below contracted service for institutional networks. If a

reported problem with an institutional network cannot be corrected immediately, Comcast staff, or its duly designated agent's staff, shall promptly explain the status to the institution in person or via phone and provide the approximate time in which the problem will be resolved. A Comcast representative, or its duly designated agent, will verify with the institution that services are working either in person or via telephone before the trouble call is closed out. Comcast, or its duly authorized agent, shall provide institutions to which it provides institutional networks with a local manager to whom the institution can escalate unresolved problems.

Miscellaneous

56. Comcast shall provide each AMO and each school, public library, and municipality within its service area with a cable modem and internet access at no charge. The internet service provided to an AMO's base production facility shall be commercial-class service.

57. Comcast shall provide the Board, the Department, affected municipalities, and affected AMOs with complete descriptions of all material system rebuilds and upgrades at least 90 days prior to the planned changes commencement of construction, and in all cases sufficiently in advance to allow time for meaningful comments and possible integration of those comments into the planned rebuilds and upgrades.

Dated at Montpelier, Vermont, this 13th day of January, 2017.

<u>s/James Volz</u>)	
	)	PUBLIC SERVICE
)	
	)	BOARD
)	
	)	OF VERMONT
<u>s/Sarah Hofmann</u>)	

OFFICE OF THE CLERK

FILED: January 13, 2017

ATTEST: s/Judith C. Whitney
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E mail address: psb.clerk@vermont.gov)

ATTACHMENT 3

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Docket No. 8301

In Re: Renewal of the Certificate of Public)
Good of Comcast of Connecticut/Georgia/)
Massachusetts/New Hampshire/New York/)
North Carolina/Virginia/Vermont, LLC, d/b/a)
Comcast, expiring on December 29, 2016, to)
provide cable television service)

Order entered: 7/27/2017

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT
PURSUANT TO V.R.C.P. RULE 59(e)

I. INTRODUCTION

On February 13, 2017, Comcast of Connecticut/Georgia/ Massachusetts/New Hampshire/New York/ North Carolina/Virginia/Vermont, LLC, d/b/a Comcast (“Comcast”) filed a motion with the Vermont Public Utility Commission, formerly the Public Service Board (“Commission” or “PUC”)¹, under Rule 59(e) of the Vermont Rules of Civil Procedure (“V.R.C.P.”) to alter or amend the Order (“Renewal Order”) and the renewed and consolidated certificate of public good (“Renewal CPG”) issued in this Docket on January 13, 2017. In the motion and a supporting memorandum of law, Comcast maintains that the Commission imposed certain renewal conditions that are not supported by the evidentiary record and are in conflict with the law and regulations applicable to cable CPG renewals. It asks the Commission to rescind or modify six conditions of the Renewal CPG.

In this Order, the Commission denies Comcast’s motion to alter or amend the Renewal Order and the Renewal CPG.

1. Pursuant to Section 9 of Act 53 of the 2017 legislative session, the Vermont Public Service Board's name was changed to the Vermont Public Utility Commission, effective July 1, 2017. For clarity, activities of the Vermont Public Service Board that occurred before the name change will be referred to in Commission documents as activities of the Commission unless that would be confusing in the specific context.

II. PROCEDURAL HISTORY RELATED TO COMCAST’S MOTION

On January 13, 2017, the Commission issued the Renewal Order approving the renewal of Comcast’s CPG subject to conditions and the Renewal CPG.

On January 26, 2017, in response to a procedural motion filed by Comcast on January 20, 2017, the Commission granted an enlargement of time for the filing of motions for reconsideration until February 13, 2017.²

On February 13, 2017, Comcast filed a motion with the Commission under V.R.C.P. Rule 59(e) to alter and amend the Order and CPG (the “Comcast Motion”).

On February 23, 2017, and March 17, 2017, in response to motions by Vermont Access Network (“VAN”) and agreements among the parties, the Commission granted extensions of time for responses to the Comcast Motion, and granted Comcast a four-week period to reply to any oppositions to its motion.

On March 22, 2017, the Vermont Department of Public Service (“Department”) filed a response to the Comcast Motion (“DPS Response”).

On March 28, 2017, VAN filed its opposition to the Comcast Motion (“VAN Response”), which it had submitted by e-mail on March 22, 2017.

On April 19, 2017, Comcast filed a reply to the responses of the Department and VAN (“Comcast Reply”).

III. APPLICABLE LEGAL STANDARD

The Comcast Motion is governed by Rule 59(e) of the V.R.C.P., which applies in Commission proceedings pursuant to Commission Rule 2.105. Rule 59(e) codifies a trial court’s inherent power to “open and correct, modify or vacate its judgments.”³ The purpose of the rule is to allow the court to avoid an unjust result arising from “the mistake or inadvertence of the court and not the fault or neglect of a party.”⁴

The Commission has broad power under the Rule to alter or amend a judgment and “may reconsider issues previously before it, and generally may examine the correctness of the

2. Docket 8301, Procedural Order of 1/26/17.

3. *Osborn v. Osborn*, 147 Vt. 432, 433 (1986).

4. *Id.*; *Rubin v. Sterling Enterprises, Inc.*, 164 Vt. 582, 588 (1996).

judgment itself.”⁵ However, a motion filed pursuant to Rule 59(e) does not provide an opportunity for parties to introduce new evidence or to raise arguments that could have been presented to the Commission prior to entry of a final order.⁶

IV. DISCUSSION AND CONCLUSION

Comcast maintains that the Commission imposed certain renewal conditions in the Renewal CPG that are not supported by the evidentiary record and are in conflict with laws and regulations applicable to cable CPG renewals.⁷ Comcast requests that the Commission alter or amend the Renewal Order and the Renewal CPG “to correct manifest errors of law and fact, and to prevent manifest injustice that would result if the Order stands unchanged.”⁸ Specifically, Comcast asks the Commission to alter and amend the Renewal CPG to eliminate or modify condition 22(3), eliminate conditions 33 and 34, modify conditions 21(b) and (c), and eliminate conditions 52 and 53 of the Renewal CPG.⁹

Comcast argues that the Renewal CPG “rests on clear errors of fact or law” in regard to the standards under 47 U.S.C. §521 et seq. (the “Federal Cable Act”) “for evaluating the reasonableness of Comcast’s CPG Renewal Proposal and would result in a manifest injustice to Comcast and Comcast customers.”¹⁰ According to Comcast, the Renewal Order suffers from the following fundamental flaws:

- (i) The [Commission] imposed additional conditions in the Order that it deemed desirable without making the necessary findings as to whether Comcast’s CPG Renewal Proposal was reasonable to meet community needs and interests, taking into account the costs of meeting those needs and interests;
- (ii) The [Commission] failed to analyze the costs of certain [Commission]-imposed conditions as required by the federal Cable Act, and instead either

5. *In re Robinson/Keir Partnership*, 154 Vt. 50, 54 (1990); *Drumheller v. Drumheller* 2009 VT 23 ¶ 28.

6. Docket 8643, *Petition of Vermont Gas Systems, Inc. for authority to condemn easement rights in property interests of the Town of Hinesburg*, Order Denying Reconsideration of 11/6/2016 at 2. *See, also*, Dockets Nos. 6946 and 6988, *In re Cent. Vt. Pub. Serv. Corp.*, Order of 5/25/2005; Docket 7156, *Petition of UPC Vermont Wind, LLC*, Order of 2/11/2011 at 3; *Northern Sec. Ins. Co. v. Mitec Electronics, Ltd.*, 184 Vt. 303, 320 321 (2002).

7. Comcast Motion at 1.

8. Comcast Motion at 5.

9. Comcast Motion at 1 2.

10. Comcast Motion at 6.

employed an impermissible “profitability” standard or entirely ignored the requisite cost analysis; and

(iii) The [Commission] failed to consider the most important finding from the parties’ renewal ascertainment, which is the impact of CPG conditions on customer rates.¹¹

This Order addresses these issues, as appropriate, as well as additional arguments made by Comcast in the context of the discussions below of each of the conditions challenged by Comcast in the Comcast Motion. It then discusses general considerations related to the Comcast Motion that involve arguments that Comcast makes with respect to all of the contested conditions.

PEG Schedules on Programming Guide -- Renewal CPG condition 22(3)

Condition 23(3) of the Existing CPG¹² required Comcast to allow program schedules for public, educational, and governmental (“PEG”) channels to be listed on Comcast’s electronic programming guide. Based on the record, the Commission concluded that condition 23(3) was a material term of the Existing CPG and that Comcast had failed to comply with that condition for several years.¹³

The Commission included condition 22(3) in the Renewal CPG to bring Comcast into compliance with its obligations under the Existing CPG, and to ensure that Comcast would be able to meet future cable-related community needs and interests in providing PEG channel program schedules to Comcast customers during the term of the Renewal CPG.

11. Comcast Motion at 6 7.

12. As in the Renewal Order, the term “Existing CPG” in this Order refers to Docket 7077 CPG, as amended, that was in effect prior to the issuance of the Renewal CPG and that was issued on December 29, 2005 and amended on September 27, 2006, October 16, 2008, and April 19, 2010. Prior to the issuance of the Renewal CPG (which consolidated Comcast’s existing CPGs), Comcast also held a separate CPG that was issued in Docket 7379 on March 21, 2008, to serve seven towns in Franklin County and one town in Orleans County, Vermont. Condition 24(3) of the Docket 7379 CPG included the same requirement with respect to allowing PEG channel schedules to be listed on Comcast’s electronic programming guide. References to conditions of the Existing CPG are meant to include equivalent conditions in the Docket 7379 (although the condition number may be different).

13. Among other claims, Comcast asserts that the Commission “did not reach a formal determination that Comcast failed to comply with condition 23(3)” of the Existing CPG based on references in the Renewal Order to the “apparent failure to comply” with the condition. Comcast Motion at 23. To the extent references in the Renewal Order to apparent failures to comply with CPG conditions or with applicable law may have left any doubt as to the Commission’s determinations in the Renewal Order, the Commission clarifies that it concluded in the Renewal Order, pursuant to 47 U.S.C. § 546(c)(1)(A) and PUC Rule 8.230(A), that Comcast failed to substantially comply with condition 23(3) of the Existing CPG. Comcast’s failures to substantially comply with material terms of its existing CPGs were apparent based on the evidentiary record in this proceeding.

This Renewal CPG condition was based on findings and conclusions set forth in the Renewal Order, including the following.

- “For several years, Comcast has not had an electronic programming guide on its systems that lists the program schedules for any of the 45 PEG access channels carried by Comcast as required by its existing CPGs.”¹⁴
- The program schedule requirement in condition 23(3) of the Existing CPG was a “material PEG outreach service requirement of its existing CPGs”¹⁵ and “the most important” of these requirements in terms of meeting community needs and interests.¹⁶
- “The unavailability of program schedules for PEG channels on an electronic programming guide is the result of Comcast’s system design choices related to programming guides.”¹⁷
- Comcast made and implemented its decision to change Comcast’s electronic programming guide without appropriate consideration of “the effects this would have on a material PEG outreach service requirement of its CPGs” and without petitioning the Commission for a determination as whether it would be reasonable to modify Comcast’s obligations under condition 23(3) of the Existing CPG.¹⁸
- The cost to Comcast of implementing condition 22(3) of the Renewal CPG is not unduly burdensome for Comcast under the circumstances and will not impair Comcast’s ability to earn a fair rate of return on its cable services in Vermont.¹⁹

In its motion filings, Comcast does not cite to any facts in the record to dispute the finding that for several years Comcast has not allowed PEG channel program schedules to be

14. Renewal Order at 54; *see, also*, finding 105 of Renewal Order at 50:

105. For several years, Comcast’s customers have not been able to view program schedules on an on screen programming guide for any of 45 PEG channels carried by Comcast. Schedule information for programs on non PEG channels is available on Comcast’s programming guide.

15. Renewal Order at 53.

16. Renewal Order at 53 and 55.

17. Renewal Order at 51 (finding 110).

18. Renewal Order at 53.

19. Renewal Order at 54 55.

listed on Comcast's electronic programming guide²⁰ and does not make any arguments that would cause the Commission to alter or amend its determination.

Comcast continues to maintain that it fulfilled its legal obligations with respect to its former electronic programming guide and that the condition 23(3) obligations of the Existing CPG did not apply to its successor electronic programming guide, that it refers to as the interactive programming guide ("IPG").²¹ The Commission rejects Comcast's argument, which essentially asserts that the requirement for PEG channel program schedules on Comcast's programming guide was ended by Comcast's design and adoption of its own new programming guide.²² The Commission cannot allow a cable operator to avoid its CPG obligations through its system redesign choices unless a modification of such CPG obligations is expressly authorized by the Commission prior to implementation of the system redesign.

Alternatively, Comcast argues that the failure to provide program information for PEG channels on the IPG was "*de minimis* non-compliance in the context of the entire franchise" that was not sufficiently substantial to prevent the Commission from adopting Comcast's CPG proposal.²³ As a result of Comcast's failure to substantially comply with a material term of the Existing CPG, Comcast's customers in Vermont have been unable to view program information on Comcast's programming guide for any of the 45 PEG channels carried on Comcast's systems in Vermont for several years. As should be clear from the Renewal Order, this compliance failure is not *de minimis* in the context of Comcast's franchise in Vermont.

20. Without citing to any evidence in the record, Comcast suggests in its motion that program information for PEG channels could have been provided on a scrolling guide on what is now the POP Channel, but that VAN rejected that option. Comcast Motion at 22; *see, also*, Comcast Reply at 9. In any case, the programming guide utilized as "Comcast's electronic programming guide" prior to 2010 was available to all subscribers, and the POP Channel is not available to all of Comcast's subscribers in Vermont, such as those receiving limited basic service. *See* exh. DMG 6.

21. Comcast Motion at 23.

22. Comcast had earlier suggested in its prefiled testimony that, because of its additional features, the IPG was not an electronic programming guide. In the Renewal Order, the Commission concluded that the IPG was now Comcast's electronic programming guide. *See* Renewal Order at 50 (finding 105) and 51 (findings 107 and 110).

23. Comcast Motion at 23.

Comcast's renewal CPG proposal contained no requirement related to the listing of program schedules for PEG channels on Comcast's electronic programming guide.²⁴ This was one of the reasons the Commission could not approve Comcast's renewal CPG proposal without modification. Comcast contends that the Commission's adoption of Comcast's CPG proposal, subject to certain modifications determined to be necessary to meet applicable legal requirements for franchise renewal, constitutes a denial of renewal for purposes of 47 U.S.C. §546(d). It states that, pursuant to such subsection, a "denial of renewal" may not be based on franchise non-compliance without notice and an opportunity to cure.²⁵ Comcast argues that the Commission was required under the Federal Cable Act to provide Comcast "with notice and a meaningful opportunity to cure the alleged deficiency *before*" issuing a decision denying Comcast's renewal CPG proposal or imposing conditions.²⁶

The Commission does not agree with Comcast that the Renewal Order constitutes a "denial of renewal" for purposes of Section 546(d).²⁷ However, assuming that Section 546(d) applies in this case²⁸ and that the Renewal Order constitutes a denial of renewal for purposes of

24. Renewal Order at 49-50 (finding 102). Thus, Comcast's renewal CPG proposal would have eliminated any CPG obligation with respect to the listing of program schedules for PEG channels on Comcast's electronic programming guide.

25. Comcast Motion at 23-24.

26. Comcast Reply at 11. Comcast cites a federal district court decision that upheld the denial of a cable franchise renewal on other grounds while concluding that issues with the cable operator's picture quality and service did not provide grounds for the renewal denial because the franchising authority failed to provide adequate notice to the cable operator about these issues and an opportunity to cure. *Rolla Cable Sys., Inc. v. City of Rolla*, 761 F.Supp. 1398, 1409. The Commission observes that *Rolla* involved an outright denial of franchise renewal and not, as in this case, changes required by the franchising authority to the cable operator's renewal proposal to bring it into compliance with existing franchise obligations.

27. The Commission's position on this issue does not affect any rights Comcast may have under the Federal Cable Act to appeal the Commission's decision in the Renewal Order "as if it were a denial." See Comcast Motion at 5; H.R. Rep. No. 98-934 at 75 (1984).

28. Section 546(d) applies to "a proposal for renewal that has been submitted in compliance with subsection (b)." As discussed in the Renewal Order, proceedings in this matter (at the election of Comcast and the other parties) have not been conducted in accordance with the procedures set forth in 47 U.S.C. §546(a)(c) in that the "ascertainment" process (in which community needs and interests are identified and the cable operator's performance is reviewed), as provided for in §546(a)(1) and the proposal review process, as provided for in §546(b), that is supposed to follow the completion of the ascertainment process were combined in this proceeding. See Renewal Order at 13. If the ascertainment process had been completed prior to the proposal review process, the Commission would have already reviewed Comcast's performance under its existing CPGs, and Comcast's CPG proposal would presumably "contain such material as the franchising authority may require, including proposals for an upgrade of the cable system." See

(continued...)

47 U.S.C. §546(d), the issue becomes whether the Commission provided Comcast with appropriate notice and the opportunity to cure its non-compliance.

The Commission first observes that there was no point in this proceeding²⁹ prior to the issuance of the Renewal Order that the Commission could have provided such notice and opportunity to cure. There was no basis on which the Commission, consistent with Comcast's procedural and due process rights, could have determined Comcast's non-compliance, provided notice of such non-compliance, and an opportunity to cure such non-compliance before the technical hearing, the admission of evidence, and the filing of briefs and reply briefs. In addition, none of the parties to this proceeding contemplated or recommended a denial of renewal. Rather, the principal issues in this proceeding have related to what the appropriate conditions for CPG renewal would be based on a consideration of the evidentiary record and the applicable legal criteria for renewal.

Based on a review of the evidentiary record and the arguments of the parties, the Commission determined that Comcast's renewal CPG proposal did not satisfy applicable renewal criteria and that certain modifications to Comcast's renewal CPG proposal were necessary to satisfy such criteria. A renewal CPG containing such modifications was issued by the Commission. Little, if any, purpose would have been served if (as Comcast now seems to suggest was required) the Commission, instead of issuing the Renewal Order and Renewal CPG, had issued an order related solely to ascertainment (or alternatively simply denied Comcast's renewal CPG proposal) and directed Comcast to submit a new renewal proposal in accordance with the Commission's findings to cure its non-compliance and to reasonably meet identified community needs and interests.

In any case, Comcast has had an opportunity in its motion filings since the Renewal Order's issuance on January 13 to present the Commission with alternative cure proposals for its non-compliance. In the Comcast Reply of April 19, Comcast states that it "is prepared to accept the modified condition as proposed by the Department," which would require Comcast to make

28. (...continued)

47 U.S.C. §546(a)(1) and (b)(1) and (2).

29. As discussed above and in the Renewal Order, this proceeding did not involve an ascertainment process that was separate from the proposal review process. *See* Renewal Order at 13 and footnote 28, above.

its programming guide available to access management organizations (“AMOs”) in headend territories only where there is no PEG channel conflict.³⁰ However, the Department’s proposal, which Comcast now accepts as a cure, was expressly rejected by the Commission in the Renewal Order because of its limited impact in that the proposal would allow for the listing of PEG channel schedules on the programming guide only for three AMOs that serve the communities of Woodstock, Newport, and White River Junction, Vermont.³¹ Comcast has made no other cure proposal.

“As a condition of CPG renewal,” the Renewal Order requires Comcast “at its expense to bring its system into compliance with its pre-existing obligations” under condition 23(3) of the Existing CPG and requires Comcast “to make such modifications to its facilities as are necessary to enable Comcast’s interactive programming guide to provide program-specific scheduling information for all PEG access channels carried on its systems in Vermont.”³²

Comcast devotes most of its argument related to this contested condition to the effects that the condition would have on Comcast’s subscribers based on the assumption that Comcast can pass the costs of implementing the condition onto subscribers as a new PEG fee.³³ Comcast states that it “has complete discretion under the [Federal] Cable Act to determine how to recover any new PEG fee imposed by the CPG.”³⁴ It also takes the position that these costs are non-capital costs imposed in support of PEG access and, therefore, constitute franchise fees subject to the 5% cap on franchise fees under the Federal Cable Act.³⁵ Because Comcast already collects

30. Comcast Reply at 4 5.

31. Renewal Order at 54.

32. Renewal Order at 54. Specifically, condition 22(3) of the Renewal CPG requires Comcast to: make such modifications to its facilities, at its expense, as are necessary to allow AMOs to access Comcast’s interactive programming guide so that all PEG channels designated by Comcast are able to have their schedules listed on the interactive programming guide (or any successor on screen programming guide). All such modifications shall be completed no later than one year from the date of this Certificate.

Renewal CPG at 7 (condition 22(3)).

33. See Comcast Motion at 13 21.

34. Comcast Motion at 16.

35. 47 U.S. C. § 542(b). Section 542(g)(2)(c) excludes from the definition of franchise fee any “capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities.” The FCC has stated that:

5% of each customer's monthly video service bill for PEG operating support, Comcast concludes that the Renewal Order "violates the limits on franchise fees and PEG-related fees established by the [Federal] Cable Act."³⁶

In the Comcast Motion, Comcast incorrectly assumes that the costs of making the required upgrades to its headend facilities can be passed on to subscribers as a PEG-related surcharge.³⁷ Similarly, in responding to Comcast's assertions in the Comcast Motion,³⁸ the Department expresses concern about the allocation of these costs amongst AMOs³⁹ and subscribers, and requests changes to the condition to shield ratepayers and AMOs from assuming the costs associated with upgrading the headend facilities so that the IPG will be capable of displaying program listings for PEG channels.⁴⁰ Comcast's assumption and the Department's concerns are based on a fundamental misunderstanding of the Renewal Order.

35. (...continued)

[c]apital costs refer to those costs incurred in or associated with the construction of PEG access facilities. These costs are distinct from payments in support of the use of PEG access facilities. PEG support payments may include, but are not limited to, salaries and training. Payments made in support of PEG access facilities are considered franchise fees and are subject to the 5 percent limit.

In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, Report and Order, 22 FCC Rcd. at 5150-5151 ¶ 109.

36. Comcast Motion at 3; *see, also*, Comcast Motion at 16 and 19.

37. This assumption may be based on Comcast's belief that the Commission did not determine in the Renewal Order that Comcast failed to comply with condition 23(3) of the Existing CPG. Comcast Motion at 23. For example, Comcast states that "only one" of the "four grounds" under the Federal Cable Act for not adopting Comcast's renewal CPG proposal (that is, 47 U.S.C. § 546(c)(1)(D) – reasonableness in light of cable related community interests) "is at issue in this proceeding." Comcast Motion at 5-6.

38. In the DPS Response, the Department expresses its belief that these costs (which it regards as capital costs) can be passed on to customers as a separate line item on bills, citing 47 U.S.C. § 542(c). DPS Response at 4-5. Section 542(c) provides that a cable operator may identify, as a separate line item on bills, the franchise fee and "(2) [t]he amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels." *See, also*, PUC Rule 8.417(D) which provides that annual "[c]apital contributions [for PEG access] are not subject to the 5% franchise fee cap but are considered external costs eligible for pass through to subscribers pursuant to 47 U.S.C. § 542(c)."

39. Because Comcast maintains that costs to implement condition 22(3) are PEG operating fees (a position the Department disputes), Comcast contends that it would have to fund such costs as an offset against other payments to AMOs for PEG operating support so as to remain under the 5% cap on franchise fees under the Federal Cable Act.

40. DPS Response at 2-3.

The Renewal Order expressly requires Comcast to make modifications to its headend facilities at its own expense to bring its system into compliance with its pre-existing CPG obligations.⁴¹ The required modifications were necessitated by Comcast's decision to design and adopt a new electronic programming guide as part of its digital enhancement project that would not allow for the listing of PEG channel schedules without such modifications. The costs of compliance to be borne by Comcast result directly from decisions made by Comcast in 2010 that were within its control. Comcast will incur these upgrade costs not because of the imposition of new PEG requirements, but because of Comcast's own actions in failing to comply with its obligations of the Existing CPG related to its electronic programming guide.⁴²

Comcast states that is not responsible for the existing headend-facility infrastructure that does not allow for the listing of PEG channel program schedules on the IPG without upgrades because it acquired the systems from Adelphia. Comcast contends that "it is the consolidated system design Comcast inherited -- and not anything Comcast did thereafter -- that makes it extremely costly to reconfigure the IPG system to deliver PEG program listings to discrete AMO territories."⁴³ Although Comcast did not create the cable infrastructure that caused the current obstacles to listing PEG channel schedules, it now owns that infrastructure and chose to implement a new programming guide system despite the effect the adoption of this guide would have on the ability of Comcast's customers to view PEG channel program schedules on such guide.

The requirement related to the listing of PEG channel program schedules predates Comcast's acquisition of Adelphia systems.⁴⁴ From 2000 until Comcast's adoption of the IPG as its electronic programming guide, AMOs were allowed to access Comcast's electronic programming guide so that the AMOs could have the schedules of their PEG channels listed on such channel guide. The headend infrastructure was not an obstacle to the listing of PEG channel

41. Renewal Order at 54.

42. Renewal Order at 51 (finding 110). "The unavailability of program schedules for PEG channels on an electronic programming guide is the result of Comcast's system design choices related to programming guides." *Id.*

43. Comcast Motion at 22.

44. Docket 6101, CPG of 4/28/00.

program schedules for either Adelphia or Comcast until Comcast's adoption of the IPG as its electronic programming guide.

Comcast's implementation of the IPG without providing for the listing of PEG channel schedules in disregard of its obligations under condition 23(3) of the Existing CPG was not Comcast's only compliance failure related to this matter. Comcast failed to take other necessary action at the time to prevent its compliance failure. Prior to implementing this system design change, Comcast should have, as it was entitled to do under both state and federal law, petitioned the Commission to consider possible changes to its CPG or proposed alternative means through which the PEG channel schedule requirement could continue to be met. As the Commission observed in the the Renewal Order, when Comcast considered the adoption of the IPG, it did not "petition the [Commission] for appropriate amendments to its existing CPGs so that the [Commission] could make a determination about the reasonableness of such proposed amendments to the CPG."⁴⁵ In another context, the Renewal Order also states:

[W]hen a cable operator implements technological changes or undertakes technology upgrades to its system, applicable law requires it to take account of the effect on PEG capabilities, services, and signal quality, to consider how it can effectively meet its obligations for PEG access in light of such technological changes, and to take appropriate action to ensure that it will remain in compliance with its applicable obligations after implementing the technological change.⁴⁶

In its response to the Comcast Motion, VAN also points to two conditions of the Existing CPG that require Comcast to provide the Commission in advance with descriptions of planned system changes and upgrades to allow time for meaningful input.⁴⁷ The Commission also observes that the Federal Cable Act contains provisions related to circumstances under which a cable operator may seek modification of its franchise requirements, which includes specific standards related to PEG obligations.⁴⁸

45. Renewal Order at 53.

46. Renewal Order at 78.

47. See conditions 73 and 69 of Existing CPG; VAN Response at 15.

48. 47 U.S.C. §545 provides in applicable part as follows:

(a) Grounds for modification by franchising authority; public proceeding; time of decision

(1) During the period a franchise is in effect, the cable operator may obtain from the franchising authority modifications of the requirements in such franchise

(continued...)

Comcast does not provide any authority for the proposition that costs incurred by a cable operator to cure its non-compliance with existing franchise PEG obligations can be passed on to its subscribers as PEG fees in any case, much less in cases, such as this one, where its non-compliance resulted not from external factors but from the cable operator's own decisions and actions.

Comcast's conduct resulted not only in its substantial non-compliance with a material term of its CPG, but it also caused important cable-related community needs and interests to be unfulfilled since the IPG was adopted as Comcast's electronic programming guide.

As Comcast notes, Vermont customers pay significant monthly surcharges to support local PEG channels throughout the State, which Comcast claims are "some of the highest fees in the nation to support PEG programming."⁴⁹ Comcast's failure to comply with the requirement to allow the listing of PEG channel schedules on its programming guide, in effect, diminished the value of the investments Comcast's cable customers have made and continue to make to support PEG channels.⁵⁰ The effect of Comcast's non-compliance is that Comcast's customers are less able to find PEG channel schedules and to take advantage of PEG channel content because

48. (...continued)

(A) in the case of any such requirement for facilities or equipment, including public, educational, or governmental access facilities or equipment, if the cable operator demonstrates that (i) it is commercially impracticable for the operator to comply with such requirement, and (ii) the proposal by the cable operator for modification of such requirement is appropriate because of commercial impracticability; or

(B) in the case of any such requirement for services, if the cable operator demonstrates that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

....

(e) Requirements for services relating to public, educational, or governmental access

A cable operator may not obtain modification under this section of any requirement for services relating to public, educational, or governmental access.

(f) "Commercially impracticable" defined

For purposes of this section, the term "commercially impracticable" means, with respect to any requirement applicable to a cable operator, that it is commercially impracticable for the operator to comply with such requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based.

49. Comcast Motion at 14.

50. *See, also*, VAN Response at 3.

Comcast does not allow for the same listing of schedules for PEG channels on its electronic programming guide that it provides for other channels, including broadcast station channels.

Condition 22(3) of the Renewal CPG requires that Comcast provide the same listing of PEG channel schedules that it provided prior to its adoption of the IPG as its electronic programming guide. To permit Comcast to pass on the costs of compliance to customers as a PEG fee surcharge would mean that Comcast's customers would bear both the burden of Comcast's non-compliance as well as the costs of remedying such non-compliance, even though such non-compliance and the magnitude of the cure costs were due to Comcast's own behavior.

In summary, there is no basis to contend, as Comcast claims, that its costs in making modifications to its headend facilities are "new PEG fees." Comcast will incur these upgrade costs not because of the imposition of new PEG requirements, but because of Comcast's decisions and actions that resulted in its failure to comply for several years with its obligation to allow PEG channel schedules to be listed on its programming guide. Accordingly, Comcast is not permitted to pass on such costs to its Vermont subscribers as a new PEG fee surcharge.

In the VAN Response, VAN once again draws the Commission's attention to the terms of the Memorandum Opinion and Order of the Federal Communications Commission ("FCC") issued in connection with Comcast's 2011 acquisition of NBC Universal ("FCC Order").⁵¹ This FCC Order imposes a condition that "Comcast cannot discriminate against PEG with respect to the functionality, signal quality, and features from those of the broadcast stations it carries."⁵² The fact that "[s]chedule information for programs on non-PEG channels is available on Comcast's programming guide," but not PEG channel schedules⁵³ raises a concern (even in the absence of an express CPG requirement and a substantial compliance failure) as to whether Comcast is illegally discriminating against PEG with respect to the features of the IPG. However, for purposes of this Order (as was the case for the Renewal Order), the Commission need not resolve the issues of whether the FCC Order conveys authority to local franchising

51. Exh. LGD 4. *See* VAN Response at 13 14.

52. Exh. LGD 4 at 88 89 (¶ 214).

53. Renewal Order at 50 (finding 105).

authorities to enforce such a requirement in a renewal CPG or as to the binding effect of this FCC Order on this proceeding.⁵⁴

Conditions Related to Line Extensions -- Renewal CPG conditions 33 and 34

Comcast requests that the Commission reconsider conditions 33 and 34 of the Renewal CPG related to line extensions. According to Comcast, the Renewal Order fails to demonstrate why Comcast's own line extension proposal was not a reasonable means of maximizing access to cable service after taking into account the costs of meeting such needs. Comcast's CPG proposal omitted conditions 33 to 43 of the Existing CPG related to line extensions and replaced them with a condition that simply reiterated Comcast's regulatory obligation to comply with the PUC cable rule, including PUC Rule 8.313 related to the line extension policies of cable operators.⁵⁵

Comcast takes the position that, in the context of a CPG renewal, a cable operator's line extension policy defines the scope of a cable operator's obligation to build-out its cable system into unserved areas of Vermont. The Commission does not agree.

The Federal Cable Act provides that in awarding a franchise to a cable operator, the franchising authority must "allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area."⁵⁶ This provision limits a franchising authority's ability to impose build-out requirements in that it must give franchisees a reasonable period of time to comply with those requirements.⁵⁷

Given the breadth of Comcast's service area in Vermont, which encompasses many small communities and rural areas, a reasonable time frame to build-out its system may extend over several CPG terms. The objective of long-standing state policy remains to extend cable service throughout the state even though that goal that may be accomplished only gradually over multiple

54. See Renewal Order at 75. However, in the Renewal Order, the Commission observed that "the explicit statement in the [FCC Order] related to PEG access to a system's features and functionality suggests that the FCC would not view the consideration of the access that PEG channels have to such features relative to broadcast channels to be beyond the purview of local franchise authorities in franchise renewal proceedings." Renewal Order at 75.

55. Renewal Order at 80 (finding 183). Comcast's line extension policy determines the circumstances and conditions under which Comcast will build line extensions at the request of potential new customers.

56. 47 U.S.C. §541(a)(4)(A).

57. *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984*, Report and Order, 22 FCC Rcd. at 5101, 5141 (March 5, 2007).

CPG terms. Under PUC Rule 8.214(B)(7), the Commission considers whether a CPG proposal provides for “the availability of service to maximum number of residences,” and has construed its consideration of this criterion within a context of reasonableness.⁵⁸ Comcast’s renewal CPG proposal was not reasonable to meet identified community needs and interests and did not adequately address the “availability of service to maximum number of residences” criterion of PUC Rule 8.214(B)(7).

Comcast contends that Renewal CPG condition 33, which requires 550 miles of line extensions over an 11-year term, was not adequately supported by identified community needs and interests.⁵⁹ Before it acquired the Vermont cable systems of Adelphia, Comcast was aware of the importance ascribed in CPG proceedings to building out cable networks to unserved areas to meet community needs.⁶⁰ However, Comcast presented no evidence in this proceeding that previously identified community needs and interests for cable line extensions to unserved areas were no longer as important as in the past or could be adequately met through compliance with PUC Rule 8.313. Based on the evidence, the Commission found that the condition 33 line extension requirements were supported by the needs and interests of the state to expand the availability of service in unserved areas of Vermont.⁶¹

Comcast also contends that the Commission did not adequately consider the construction costs associated with the condition.⁶² It is true that no specific evidence was presented in this proceeding as to construction costs for line extensions and that, in taking account of costs in determining the reasonableness of condition 33, the Commission considered other relevant factors in weighing the costs and benefits of line extensions.

58. The Commission agrees with the Department that the “availability of service to a maximum number of residences” criterion that applies in the consideration of CPG proposals is “wholly separate and distinct” from any line extension obligations under PUC Rule 8.313. DPS Response at 8.

59. Comcast Motion at 26.

60. *See* Renewal Order at 78. In the Existing CPG, Comcast assumed the remaining line extension obligations of Adelphia's renewal CPGs and completed 998 miles of line extensions in satisfaction of these obligations. Renewal Order at 82 (finding 188).

61. Renewal Order at 88.

62. Comcast Motion at 26. It also notes that the Commission “has not calculated the costs of the mandated construction nor has it calculated the number of consumers potentially served by that construction.” Comcast Motion at 31.

If Comcast believed that evidence about its line extension construction costs would support its position, it had the burden to introduce such evidence for the Commission's consideration. It offered no such evidence in support of its own proposal or in response to the Department's prefiled testimony. As the U.S. Court of Appeals for the 6th Circuit concluded in a case where a cable operator failed to present satisfactory evidence as to the costs of meeting a community need:

A court's task is to weigh the value of an identified need against its cost. Where, as here, the operator fails to present evidence of the cost of meeting a need, the operator cannot successfully argue on judicial review that that balance weighs against meeting the need.⁶³

To the extent of the available evidence in the record, the Commission did weigh the reasonableness of the line extension requirements of condition 33 in relation to their costs. The Department made persuasive arguments in support of the reasonableness of a 550-mile line extension requirement over the 11-year Renewal CPG term based on evidence in the record. As the Department notes, the Commission considered several factors in taking into account the reasonableness of the costs related to the condition and in determining that condition 33 of the Renewal CPG "will not impair Comcast's ability to continue to earn a fair and reasonable return on its investments."⁶⁴ Such factors included the historic rate of line extensions in the service area, prior construction budgets for line extensions, and the profitability of Comcast's cable operations in Vermont currently and while it was completing significant line extensions in Vermont.⁶⁵

Comcast maintains that the overall profitability of Comcast's cable operations in Vermont is not an appropriate subject for consideration when determining whether line extension obligations are reasonable.⁶⁶ It suggests that the Commission was required to conduct a strict return on investment analysis with respect to any particular line extension requirement similar to the analysis applied to line extension requests made by potential customers under PUC Rule 8.313. Essentially, Comcast argues that there must be a demonstration that a build-out

63. *Union CATV, Inc. v. City of Sturgis, Ky.*, 107 F. 3d. 434, 442 (6th Cir. 1997).

64. Renewal Order at 89.

65. DPS Response at 7; Renewal Order at 80 82, 86 89.

66. Comcast Motion at 30 33.

requirement in a CPG will pay for itself in order for it to be reasonable. Such a construction of federal and state law is inconsistent with the legislative history of the Federal Cable Act⁶⁷ and with the purpose of applicable state criteria and long-standing policy objectives. Furthermore, as the Department points out, the FCC has stated that it would seem reasonable for a local franchising authority to consider build-out benchmarks for a cable operator that take into account the market success of the operator.⁶⁸

Comcast additionally asserts that the discretion condition 33 affords Comcast in terms of the location of future line extensions indicates that there is no compelling need in any particular unserved geographical area for cable line extensions.⁶⁹ Contrary to Comcast's assertion, a compelling need for the extension of cable lines exists in almost all of the large number of currently unserved communities in Comcast's service area. By providing discretion to Comcast about where to build line extensions, condition 33 makes it more likely that Comcast's business interests (in constructing line extensions where they will have the lowest net cost to Comcast) will generally align with those unserved areas of the state where the greatest need and opportunity for line extensions exist.

67. "[I]n assessing the costs [under § 546(c)(1)(D)], the cable operator's ability to earn a fair rate of return on its investment and the impact of such costs on subscriber rates are important considerations." H.R. Rep. No. 98 934 at 74. A review of the House Report makes clear that the "fair rate of return on its investment" refers to the overall investment by the cable operator in the franchise area and does not necessarily require a fair rate of return on each CPG obligation reasonably needed to meet community needs and interests after taking into account the costs of meeting such needs.

68. DPS Response at 7, citing *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984*, Report and Order, 22 FCC Rcd. 5101, 5143 ¶ 89 (March 5, 2007). In the Comcast Reply, Comcast seeks to cast doubt as to whether the FCC would regard such a requirement as reasonable in the case of incumbent cable operators. Comcast Reply at 12-14. The FCC statement cited by the Department was made in the context of an FCC order discussing build out requirements that unreasonably restrict the entry of new competitors into the service territory of incumbent cable operators (because of the expense of such requirements in discouraging entry). Because the underlying rationale behind that section of the FCC order (that is, the concern that "build out requirements can serve as a barrier to new entrants") did not apply to incumbents, the FCC later concluded that the "build out" section of that FCC order is inapplicable to incumbents. *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984*, Report and Order, 22 FCC Rcd. 19633, 19636-19637 ¶ 9 (November 6, 2007). Given the rationale of the FCC Order to lessen barriers for new entrants, any build out requirement that seemed reasonable for a potential new entrant would also seem reasonable for an incumbent cable operator, such as Comcast.

69. Comcast Motion at 28.

In the Comcast Motion, Comcast also reiterates arguments it previously made asserting that condition 33 is punitive and discriminatory against Comcast. As should be evident from the discussions in the Renewal Order and this Order, the line extension requirement of condition 33 is in no way intended as a punitive measure, but was included in the Renewal CPG to meet continuing community needs and interests and applicable state criteria.⁷⁰

In addition, the Renewal Order and the Renewal CPG do not subject Comcast to discriminatory treatment. The build out of cable systems to unserved areas is a relevant factor in CPG proceedings for every cable operator in Vermont. Consideration of the availability of service to the maximum number of households within a cable operator's service area and the reasonableness of an operator's proposed build-out requirements (or the absence thereof) to meet community needs for the extension of service to unserved areas are relevant to all cable renewal proceedings. However, the decision to include build-out requirements and the extent and nature of such obligations depends on the specific circumstances of each CPG renewal proceeding, including: (i) whether the operator's system is largely built out in its service area, (ii) whether build-out requirements would be reasonable taking into account the costs of the build-out obligations to the particular cable operator and its ability to bear such costs and still earn a fair rate of return; and (iii) whether a stipulation has been agreed to among the parties with respect to the CPG. As the Department discusses in the DPS Response, Comcast has a substantially larger service area, network, revenues, and net income than any other cable operator in the state, and there are relatively few geographic areas in which its service area overlaps with that of other cable operators.⁷¹ Circumstances related to any determination of the reasonableness and extent of any cable line extension obligation are different for Comcast than for most other Vermont cable operators.

70. *See, also*, DPS Response at 8 9 and 12. Condition 33 requires significantly fewer miles of line extensions than the Existing CPG and was "designed to ensure that Comcast continues to expand its network at a rate that is consistent with historic practices, which the Department found to be mostly satisfactory." DPS Response at 12.

71. DPS Response at 10 11. Based on cable company annual reports for 2016, the Commission observes that Comcast reported revenue of \$212 million and net income of \$65 million from its cable services in Vermont in 2016. No other cable operator reported revenue in excess of \$18 million or net income in excess of \$5.0 million, and only one reported revenue of over \$8.0 million or net income of over \$1.0 million. The Department states that Comcast's "overall scale and ubiquitous presence throughout Vermont justify the imposition of certain conditions that were not warranted or necessary" in CPG proceedings involving other cable operators. DPS Response at 11.

Finally, Comcast argues that the Commission did not give adequate consideration to the possible effect on subscriber rates that may result from the costs of condition 33, especially in light of the demonstrated public concern about the high cost of Comcast's cable services. Because Comcast makes the same argument with respect to other of the contested conditions, the Commission addresses the possible impact of the contested conditions on Comcast's prices for cable service in Vermont in its discussion below of general considerations related to the Comcast Motion.

Comcast also objects to Renewal CPG condition 34, which incorporates the requirements (in slightly modified form) of conditions 33 and 38 of the Existing CPG that Comcast perform and provide an annual calculation of qualifying density in support of Comcast's line extension tariff. In its renewal CPG proposal, Comcast eliminated the requirements of conditions 33 and 38 of the Existing CPG without any explanation of why these requirements were no longer needed. The Renewal Order also found that Comcast has not complied with the requirement of the Existing CPG to provide an annual calculation of qualifying density since its 2008 annual report was filed.

Condition 34 of the Renewal CPG continues the requirements of the Existing CPG that Comcast provide support for its line extension tariff by providing an annual calculation of qualifying density in accordance with methodology and principles that the Commission previously approved. While the condition requires Comcast to make this calculation annually and provide it with its annual report (and not just when it makes changes to its line extension tariff), the requirement is similar to PUC Rule 2.402, which requires rate filings to include complete and substantial justifications for proposed rate changes with detailed calculations of costs of service and other relevant inputs in accordance with the ratemaking methodology or principles approved or utilized by the Commission. The Commission discussed the reasons for including condition 34 in the Renewal CPG and sees no reasons to change its determination.⁷²

Condition Related to Remote Origination Sites -- Renewal CPG condition 21(b) and (c)

Comcast contests Renewal CPG condition 21(b) and (c), which sets forth requirements for remote origination sites ("ROS") capable of providing live programming. Comcast contends

72. Renewal Order 83 86.

that the Commission did not give adequate consideration of costs in its decisions not to include Comcast's proposed renewal CPG condition in the Renewal CPG and to include instead a condition based on requirements proposed by the Department.⁷³ Comcast maintains that if the Commission had properly considered costs, it would have recognized that Comcast's ROS proposal was reasonable and that the ROS condition in the Renewal CPG was "facially unreasonable."⁷⁴

Comcast requested modifications to the ROS condition because technological constraints related to the introduction of non-cable television services had raised the cost of making a cable drop capable of providing two-way service and remote origination service to sites within 500 feet of its cable plant if there was not an existing "I-NET/return line designated fiber." The Commission was unable to find Comcast's ROS condition proposal to be reasonable under applicable criteria based on the evidence presented in the record. However, the Commission, in adopting the Department's proposed condition that, most significantly, allowed Comcast to employ various alternative technologies to meet its ROS requirements, considered the costs to Comcast of the existing ROS condition. As the Department notes, the new ROS condition takes into account Comcast's engineering and cost concerns without reducing the number of sites that would be eligible for remote origination drops.⁷⁵

In the Comcast Motion, Comcast mischaracterizes the condition in the Renewal CPG as the retention of the exact same condition as in the prior CPG and makes no acknowledgment of its ability to use various alternative technologies to meet the condition.⁷⁶ In the Comcast Reply, it refers to the option to use alternative technologies only to fault (i) the Department and VAN for

73. In general terms, the condition in the Existing CPG required Comcast to provide a cable drop capable of providing two way and remote origination service upon request and at no charge to certain community sites located within 500 feet of its cable plant. The proposed condition in Comcast's renewal CPG proposal required Comcast to provide such a drop only if the site was within 500 feet of an existing I NET/return line designated fiber designed for and capable of supporting the upstream transmission of live cable casted programming. VAN and the Department each had alternative proposals. The Department's proposal required Comcast to provide a cable drop "for upstream origination" of programming to sites located within 500 feet of its cable plant, but allowed Comcast to employ various alternative technologies of its choice to provide the upstream origination capability. See Renewal Order at 41 49.

74. Comcast Motion at 40.

75. DPS Response at 14.

76. Comcast Motion at 39 and 37 40.

not citing any evidence in the record establishing cost savings for alternative technologies and (ii) the Renewal Order for not explaining how costs would be offset by the use of alternative technologies. However, Comcast itself presented little specific evidence as to the costs of the ROS condition in the Existing CPG in support of its own proposal and provided no evidence about how the use of alternative technologies might affect costs relative to its proposal.⁷⁷ Comcast's failure to present such evidence about costs was particularly notable given the knowledge it uniquely had concerning the costs of the pilot project in Rutland that employed an alternate technology to provide ROS service.⁷⁸ The Commission concludes that Comcast has not provided sufficient reason for the Commission to alter or amend the ROS condition in the Renewal CPG.

Conditions Related to Institutional Networks -- Renewal CPG conditions 52 and 53

Comcast's renewal CPG proposal omitted the conditions in the Existing CPG related to institutional networks without any explanation of why these conditions were no longer required to meet previously identified community needs and interests taking into account the costs of meeting such needs. Comcast presented no evidence about these conditions during this proceeding.

Comcast argues that, in the absence of new ascertainment evidence of the need for conditions 52 and 53, these conditions can't be imposed in the Renewal CPG. As discussed below in the discussion of general considerations related to the Comcast Motion, the requirements of a cable operator's current CPG are relevant as evidence of previously identified community needs in a CPG renewal proceeding. Comcast also asserts that a 11.25% cap on Comcast's rate of return to provide the contemplated network is not commercially reasonable.⁷⁹ The Commission disagrees and finds no basis on reconsideration to grant Comcast's request to remove conditions 52 and 53 from the Renewal CPG.

77. See VAN Response at 28 29.

78. Renewal Order at 43 (finding 99); *see, also*, VAN Response at 29.

79. *See* Comcast Motion at 43 46; *see also*, VAN Response at 29 30.

General Considerations related to the Comcast Motion for Reconsideration

Although partially addressed in the discussions of the contested conditions above, the Comcast Motion raised some global concerns about the Renewal Order and the contested conditions. Comcast asserts that the Renewal Order is fundamentally flawed for: (i) imposing the contested conditions without making the necessary findings as to whether Comcast's renewal CPG proposal was reasonable; (ii) failing to properly analyze the costs of the contested conditions; and (iii) failing to consider the impact of the contested conditions on subscriber rates.⁸⁰

Reasonableness of Comcast's renewal CPG proposal

In the Renewal Order, the Commission found on the basis of evidence related to each of the proposed conditions in Comcast's renewal CPG proposal that Comcast's proposal was not reasonable without additions to or modification of several of Comcast proposed conditions.⁸¹ After reviewing Comcast's filings in support of its reconsideration motion, the Commission finds no reason to alter or amend its judgments, as the reasonableness determinations made by the Commission with respect to Comcast's proposal and with respect to each of the contested conditions are soundly based on available evidence in the record and applicable law.

The core of Comcast's argument seems to be that the Commission did not properly assess the reasonableness of Comcast's renewal CPG proposal under applicable criteria of the Federal Cable Act. The Comcast Motion generally sets forth Comcast's interpretation of applicable standards under the Federal Cable Act.⁸² It then asserts that the Commission "did not make any finding regarding the reasonableness of Comcast's CPG Renewal Proposal before imposing the contested conditions" and instead "engaged in a comparative process that the Cable Act quite

80. Comcast Motion at 6 13.

81. In the Renewal Order, the Commission found that:

Comcast's CPG Proposal, subject to the modifications and additional conditions approved by the [Commission] in this Order, is reasonable to meet future cable related community interests and needs, taking into account the cost of meeting such needs and interests and is a financially sound and stable proposal.

Renewal Order at 25 (finding 44). This finding was supported by findings 45 to 217, as applicable, of the Renewal Order.

82. Comcast Motion 7 9.

clearly prohibits.”⁸³ As is more clearly indicated elsewhere in the Comcast Motion and in the Comcast Reply, Comcast objects to the Commission’s consideration of Comcast’s proposed renewal CPG conditions in relation to the conditions of the Existing CPG.⁸⁴ Comcast suggests that the Commission should not have given evidentiary weight to the conditions of the Existing CPG in its determinations related to Comcast’s proposal.⁸⁵

Cable CPG renewal proceedings do not start with a clean slate, but rather in the context of an existing CPG. Existing CPG conditions provide evidence of previously identified community needs and interests. In addition, these conditions are based on prior determinations, pursuant to 47 U.S.C. § 546(c)(1)(D) and PUC Rule 8.230(D), that the conditions are reasonable to meet the future cable-related community needs and interests taking into account the costs of meeting such needs and interests. The Existing CPG provides evidence that may be relevant to such determinations in a renewal proceeding, just as the Department’s community needs assessment or other evidence presented by the parties provides such evidence.

A cable operator has the burden of demonstrating that the omission or modification of existing CPG conditions from its renewal CPG proposal is reasonable given changes in circumstances or other considerations it identifies. Such changed circumstances may result from changes in community needs (possibly, because the need has been largely satisfied or is no longer as important as it previously was) or as a result of changes in the costs of meeting such needs (for example, significantly higher construction or equipment costs) or in the effect such costs would now have on the cable operator (possibly, because of changes in the operator’s financial circumstances related to its Vermont cable operations).

The conditions of the Existing CPG were previously determined by the Commission to be required to meet future cable-related community needs and interests after taking into account the cost of meeting such needs or to meet other criteria applicable to cable CPGs under state and federal law. Whenever its renewal CPG proposal omitted or modified an existing condition,

83. Comcast Motin at 9.

84. Comcast Motion at 44 45; Comcast Reply at 22.

85. “The presence of a provision in a prior CPG is legally irrelevant to the reasonableness of a current renewal proposal.” Comcast Motion at 44.

Comcast had the burden to explain the reasons for such omission or modification. Comcast did not meet this burden with respect to its own proposal.⁸⁶

Comcast also asserts that the contested conditions impose requirements that “go far beyond” Comcast’s proposal.⁸⁷ It observes that renewal requirements of federal law are designed to provide certain protections to cable operators against possible overreach by local franchising authorities in the renewal process.⁸⁸

The Commission takes seriously all of its responsibilities under federal and state law related to cable CPG renewals, including limitations under the Federal Cable Act on the authority of the Commission in such renewals. Moreover, in the case of the contested conditions, any concern about regulatory overreach is especially inapplicable. None of the contested conditions impose new obligations based on newly identified community needs. All the contested conditions are derived from or based on obligations of the Existing CPG. Furthermore, all of the conditions of the Existing CPG were agreed to by Comcast prior to its acquisition of Adelphia’s cable systems in Vermont. Finally, the requirements of the Renewal CPG are generally less onerous than the conditions of the Existing CPG. Overall, the Renewal CPG reduces the compliance burdens on Comcast as compared with the Existing CPG.

Adequacy of cost analysis

Comcast challenges the adequacy of the Commission’s cost analysis with respect to the contested conditions. It generally argues that the Commission did not adequately consider the costs to Comcast of meeting the contested conditions over the 11-year term of the Renewal CPG.

The Commission did consider and analyze the costs of the contested conditions to the extent of available evidence in the record. Any limitations in the evidentiary record concerning

86. Moreover, to accept Comcast’s argument would mean that a cable operator could propose a renewal CPG with no conditions and thereby place the burden on the other parties to re litigate, and to provide proof of, the current need and reasonableness of every condition in the existing CPG. Placing the initial burden on the cable operator to rebut the evidentiary weight of an existing condition by showing that its proposal is reasonable in the case of any omitted or modified condition provides for a fairer, less cumbersome, and more efficient process and is consistent with state law, the Federal Cable Act, and applicable evidentiary rules and procedures.

87. Comcast Motion at 3

88. Comcast Motion at 7 8.

the costs to Comcast of satisfying such conditions generally result from Comcast's failure to present specific evidence about them.⁸⁹ Comcast faults the Commission for its own neglect.⁹⁰

In the Renewal Order, the Commission made reference to evidence presented by the Department about the profitability of Comcast's cable operations in Vermont as part of the Commission's analysis of the reasonableness of the costs of the contested conditions.⁹¹ Comcast observes that profitability "is not a lawful basis for rejecting an element of the operator's renewal proposal under 47 U.S.C. § 546(c)(1)(D)."⁹²

In the Renewal Order, the Commission did not use profitability as a basis for rejecting any condition proposed by Comcast. Comcast's profitability was only used as a metric for determining whether Comcast's Vermont operations could bear the costs of requirements determined to be necessary to meet community needs. In the Commission's view, the cost/benefit analysis contemplated under federal and state law involves not only a determination that the benefits to the community of a condition exceed the costs of meeting such needs, but also that such costs can reasonably be borne by the cable operator without impairing its cable operations or its ability to earn a fair rate of return in Vermont. Accordingly, the ability to earn a fair rate of return, market success, profitability, and other financial indicators may all be relevant to "taking into account the costs of meeting identified community needs and interests."

Effect of Renewal CPG conditions on customer rates

Comcast maintains that the Renewal Order failed to recognize or consider the effect that Comcast's costs in meeting the contested conditions may have on subscriber rates. Comcast correctly notes that the greatest number of public comments received by the Commission

89. In addition to its unique knowledge of such costs, Comcast clearly had the burden of presenting evidence about such costs on rebuttal. When another party to a cable renewal proceeding presents evidence in support of the reasonableness of its own proposed conditions on the basis that the cable operator's proposed conditions are not reasonable under applicable criteria, the cable operator has the burden of presenting rebuttal evidence, which may involve, for example, providing specific evidence about the relative costs of the proposed conditions. Comcast's failure to provide specific rebuttal evidence as to its costs is particularly notable with respect to the contested conditions related to line extensions and ROS origination sites.

90. "Where, as here, the operator fails to present evidence of the cost of meeting a need, the operator cannot successfully argue on judicial review that that balance weighs against meeting the need." *Union CATV, Inc. v. City of Sturgis, Ky.*, 107 F. 3d. 434, 442 (6th Cir. 1997); *see, also*, VAN Response at 20 21.

91. *See*, for example, Renewal Order at 54 55 and 88 89.

92. Comcast Motion at 10.

expressed concern about the costs of Comcast's cable television services.⁹³ The Department has valid concerns, which are supported by its testimony and community needs assessment, about the rising cost of cable service.⁹⁴ Furthermore, the Renewal Order contained the following finding about the effect such costs have on Comcast customers in Vermont:

The Department's CNA report indicated that the high cost of cable service is a common reason that customers either choose not to purchase or end service with Comcast.⁹⁵

The Commission fully shares the Department's concerns about the high and rising costs of cable services in Vermont. The extent to which the costs of contested conditions will contribute to higher prices for Comcast's cable services in Vermont is an important consideration for the Commission, regardless of whether prices for Comcast's services are already perceived to be high.⁹⁶

The Renewal Order assessed the reasonableness of the costs to Comcast of the contested conditions based on the available evidence. In considering the effect of such costs on customer rates, the Commission first observes that, given the scale of Comcast's Vermont operations, the compliance costs related to the contested conditions (which may appear significant in absolute terms) are likely to have a relatively modest effect on Comcast's cost of service over the 11-year term of the Renewal CPG.

More importantly, however, is the fact that Comcast is generally not a rate-regulated utility with cost-based rates. Comcast sets the prices for almost all its cable services and has discretion to establish such prices based on market factors and other considerations it determines to be relevant, including costs and pricing strategies. Because Comcast is not rate-regulated, it is difficult to assess the extent to which the costs of Comcast's compliance with the contested conditions may affect the prices that Comcast chooses to charge for its cable services in Vermont. Factors, in addition to costs, including factors that are more within Comcast's control (such as the operating margins it maintains), appear to be much more significant factors in

93. Comcast Motion at 18.

94. See DPS Response at 4, Peterson pf. at 6, and exh. DPS CP 1 (attachment D at 12, 15).

95. Renewal Order at 100 (finding 223).

96. H.R. Rep. No. 98 934 at 74.

determining Comcast's prices for services and in resulting public perceptions about the high and rising costs of Comcast's services than any costs to Comcast attributable to the contested conditions will be.

Based on the foregoing, the Commission hereby denies Comcast's motion to alter or amend the Renewal Order and the Renewal CPG pursuant to V.R.C.P. Rule 59(e).

SO ORDERED.

Dated at Montpelier, Vermont, this 27th day of July, 2017.

s/James Volz)
 James Volz) PUBLIC UTILITY
)
)
)
) COMMISSION
)
)
)
) OF VERMONT
s/Sarah Hofmann)
 Sarah Hofmann)

OFFICE OF THE CLERK

FILED: July 27, 2017

ATTEST: s/Holly R. Anderson
Deputy Clerk of the Commission

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E mail address: puc.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within thirty days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within ten days of the date of this decision and Order.

ATTACHMENT 4

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7077

Joint Petition of all Vermont affiliates of Adelphia)
Communications Corporation ("Adelphia") and Time)
Warner Cable Inc. for (1) consent to sell substantially)
all of Adelphia's Vermont assets to Cable Holdco)
Exchange III LLC, (2) approval of such affiliates')
abandonment of cable-television service in Vermont;)
and (3) revocation of the Docket No. 7077 affiliates')
Certificates of Public Good; AND **Joint Petition** of)
Time Warner Cable Inc. and Cable Holdco Exchange)
III LLC, for a Certificate of Public Good for Cable)
Holdco to own and operate said cable television)
systems; AND **Joint Petition** of Time Warner Cable)
Inc. and Comcast of Georgia, Inc., for authority to)
acquire control of Cable Holdco Exchange III LLC)

Hearings at
Montpelier, Vermont
October 24 and 26, 2005

Order entered: 12/29/2005

PRESENT: James Volz, Board Chairman
David C. Coen, Board Member
John D. Burke, Board Member

APPEARANCES: See Appendix A

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I. INTRODUCTION

This matter concerns a petition filed by all of the affiliates of Adelphia Communications Corporation that operate cable-television systems in Vermont (the "Adelphia Affiliates"),¹ Comcast of Georgia, Inc. ("Comcast"), Time Warner Cable Inc. ("Time Warner Cable") and an indirect subsidiary of Time Warner Cable named Cable Holdco Exchange III LLC ("Holdco," and together with the Adelphia Affiliates, Comcast, and Time Warner Cable, the "Joint Petitioners").

The Joint Petitioners seek various approvals required under Vermont law, first, for the Adelphia Affiliates to sell and Holdco to acquire substantially all of the assets used by the Adelphia Affiliates to provide cable-television service in Vermont² and, second, for Comcast to acquire from Time Warner Cable control of Holdco. Although unlikely, it is possible that Time Warner Cable, rather than Comcast, will retain control of Holdco. These transactions require the following actions by this Board:

- Under 30 V.S.A. §§ 109 and 232, a finding that the sale of the assets by the Adelphia Affiliates to Holdco will promote the general good of the state and an order consenting to the sale;
- Under 30 V.S.A. § 505, an order consenting to the revocation of all of the Certificates of Public Good ("CPGs") held by the Adelphia Affiliates to operate cable-television systems in Vermont;
- Under 30 V.S.A. § 504 and Board Rule 8.214, findings that Holdco meets each criterion established by that statute and that rule for issuance of a CPG authorizing Holdco to build and operate a cable-television system in Vermont; and
- Under 30 V.S.A. § 515, an order finding that Comcast's acquisition of control of Holdco is not contrary to the public good of the state.

After reviewing the Joint Petitioners' application and the evidence of record and based on the findings of fact contained in Part II of this decision, we find that the approvals sought by the

1. Mountain Cable Company, L.P., a Vermont limited partnership; Better TV, Inc. of Bennington, a Vermont corporation; FrontierVision Operating Partners, L.P., a Delaware limited partnership; Adelphia Cablevision of New York, Inc., d/b/a Adelphia Cable Communications (formerly Harron Communications Corporation), a New York corporation; Lake Champlain Cable Television Corporation, a Vermont corporation; Multi Channel T.V. Cable Company, an Ohio corporation; Richmond Cable Television Corporation, a Vermont corporation; and Young's Cable TV Corp., a Vermont corporation (all d/b/a Adelphia Cable Communications).

2. The Cities, Towns, and Gores now served by the Adelphia Affiliates are listed in Appendix B.

Joint Petitioners should be granted with conditions, and that with these conditions Holdco's operation of a cable-television system in Vermont to serve the areas previously franchised to the Adelphia Affiliates will promote the public good.

A. Procedural History

The Joint Petitioners submitted their joint petition on June 20, 2005. On July 6, 2005, the Board gave notice of its receipt of the petition, a prehearing conference to be held on July 13, 2005, and a public hearing to be held on July 19, 2005. At the prehearing conference, the parties agreed and the Board subsequently issued a procedural order establishing the schedule for this docket.

The Prehearing Conference Memorandum required Holdco to file a proposed CPG. In accordance with that Order, on July 22, 2005, on behalf of Holdco, Comcast filed a proposed CPG and supporting supplemental testimony.

The Prehearing Conference Memorandum also established a deadline for intervention of July 27, 2005. Vermont Access Network ("VAN"), acting on behalf of 23 access-management organizations (or "AMOs"), the Town of Brattleboro and the City of Burlington all filed requests to intervene. No party objected to these parties' intervention. The Joint Petitioners asked, however, that the interventions be limited to the issues stated in their respective intervention motions, and the Board issued an order allowing these parties to intervene on that basis on August 11, 2005.

On July 19, 2005, the Board held a Public Hearing via Vermont Interactive Television. The Public Hearing was carried at twelve sites around the state; a total of twenty-one members of the public spoke. In addition, the Board received six letters and ten e-mail messages from concerned members of the public.

In accordance with the Prehearing Conference Memorandum, the parties engaged in discovery on the Joint Petitioners in August. On September 2, 2005, the Department of Public Service (the "Department") and VAN prefiled testimony stating their recommendations to the Board with respect to the joint petition. Following discovery on these filings, on September 29,

2005, the Joint Petitioners and the Department prefiled rebuttal testimony.³ Following further discovery on these filings, the Board held technical hearings on the joint petition on October 24 and 26, 2005. The parties have subsequently filed proposals for decisions and briefs.

B. Positions of the Parties

As previously noted, the Joint Petitioners seek various approvals required under Vermont law for Holdco to acquire and operate a cable-television system that will serve the areas now franchised to the Adelphia Affiliates. Holdco has proposed a single, uniform CPG for these franchises that substantially accepts all of the conditions imposed on the various Adelphia Affiliates, including each specific condition imposed on them with respect to line extensions. Holdco, however, objected to certain of the other existing Adelphia conditions; it also proposed modifications to certain conditions relating to Public, Educational, and Governmental (or "PEG") access, asking that they reflect the complete rewrite of the PEG-access rules adopted by the Board in March 2005; and the proposed CPG also included modified and additional conditions reflecting recent CPGs issued by the Board for cable franchises (*e.g.*, *Pet. of City of Burlington, d/b/a Burlington Telecom, for a certificate of public good to operate a cable television system in the City of Burlington, Vermont*, Docket No. 7044, Order of 9/13/2005 ("*Burlington Telecom*").

Initially the Department recommended that the Joint Petitioners receive the approvals sought but that additional conditions be imposed in Holdco's CPG. On October 23, 2005, the Department, Holdco, Comcast, and Time Warner Cable filed a Memorandum of Understanding (the "Settlement") attached to which was an agreed CPG that resolved those parties' differences as to the conditions to be imposed in the Holdco CPG. While the Settlement had many laudable provisions which we would have been glad to accept, only the Department and the Joint Petitioners joined in that Settlement or the negotiations that led to it. The issues of concern to the other parties to this docket were settled without their participation or consent. The Board sees merit in some of the positions advocated by those non-participants and which are not reflected in

3. On September 8, 2005, the Town of Brattleboro filed a request to enlarge the time for it to prefile testimony. Ltr. from Robert M. Fisher, Esq., Fisher & Fisher to Susan M. Hudson of September 8, 2005. The Town of Brattleboro prefiled its testimony on the date when the parties' prefiled rebuttal testimony was due (September 29, 2005), no party objected to the Town's filing and the Board admitted the testimony. Tr. 10/26/05 at 6.

the Settlement. By its terms, the Settlement is void if the Board does not accept it in its entirety; because of these circumstances, we cannot.

VAN did not oppose issuance of a CPG to Holdco but made a number of recommendations for PEG conditions. Generally these recommendations would require Holdco to comply with Rule 8.400 and assume the existing PEG contracts between the various Adelphia Affiliates and AMOs conditions to which Holdco does not object and would also require Holdco to provide additional financial support to AMOs, offer certain statewide applications and address matters that VAN argues have arisen subsequent to the Board's adoption of revised PEG rules.

The Town of Brattleboro also seeks various conditions governing Holdco's PEG-access obligations in the Town as well as in neighboring New Hampshire towns and to other cable companies operating in the area. The Town also requests five courtesy Internet services for the municipality and generally asks that the Board enforce the existing conditions that apply to Adelphia with respect to line extensions, PEG access, and requests for proposals to provide institutional networks.

The City of Burlington did not prefile testimony but examined Comcast witnesses at the technical hearings and asks that Holdco perform certain obligations under an existing agreement between the City of Burlington and the Adelphia Affiliate serving customers in Burlington with respect to senior discounts. The City also seeks to ensure that Holdco will assume any liabilities that Adelphia has with respect to existing pole attachments.

C. Background

The transactions for which approval is sought in this docket relate to the bankruptcy of Adelphia Communications Corporation and its filing for reorganization, on behalf of itself and all of its affiliates including the Vermont Adelphia Affiliates, under Chapter 11 of Title 11 of the United States Code. As is noted in our findings of fact below, Comcast and Time Warner Cable proposed and Adelphia Communications Corporation accepted a plan by which Comcast and Time Warner Cable (through affiliates) will acquire, and divide up between, them the assets of

essentially all of the Adelphia franchises in the country. If the transactions close as planned, Comcast is to control the Adelphia Affiliates' assets in Vermont by acquiring control of Holdco.

This matter is now ready for decision. In Part II we make findings of fact and conclusions of law under each relevant criterion established by Chapter 13 of Title 30 and by the Board's regulations (Rule 8.214, known as the "EMCO Criteria"). In accordance with our past practice in issuing cable television CPGs, we organize our findings under the four criteria established by federal law (47 U.S.C.A § 546(a)) governing franchise renewals. These findings also support our conclusions of law with respect to the other approvals sought by the Adelphia Affiliates and with respect to Comcast's planned acquisition of control of Holdco. Findings of fact proposed by the parties that are inconsistent with ours are hereby rejected.

II. FINDINGS OF FACT

A. Company Background

1. Adelphia Communications Corporation is organized in Delaware. Pet. at 2.
2. The Adelphia Affiliates are eight corporations or limited partnerships affiliated with Adelphia Communications Corporation, all of which do business in Vermont as "Adelphia," and which own various assets used to operate cable television systems in Vermont serving approximately 110,000 subscribers in 184 cities, towns, and gores.⁴ *Id.* at 1 2.
3. Comcast Corporation is a Pennsylvania corporation that indirectly controls Comcast of Georgia, Inc., a Colorado corporation, which does business as "Comcast." *Id.*
4. Comcast Corporation is the largest provider in the United States of cable services and is also providing high-speed Internet and voice-communications services, with 21.5 million cable customers, seven million Internet customers and about one million telephone customers in 35 states and the District of Columbia. Exh. TWC/Comcast 1, exh. D (Comcast Annual Report) at 16; Hackley pf. at 6, 14 15; Martin pf. at 3.
5. Time Warner Cable Inc. is a Delaware corporation and a subsidiary of Time Warner Inc. Pet. at 1; *see* exh. TWC/Comcast 1, exh. D (Annual Report of Time Warner Inc.).

4. The cities, towns, and gores are identified in Appendix B.

6. Time Warner Cable is one of the largest cable television systems in the country; as of December 31, 2004, it served approximately 10.9 million subscribers in 29 states. Rosenblum pf. at 4.⁵

7. Time Warner Cable, through its indirect subsidiary Time Warner NY Cable LLC, has organized Cable Holdco Exchange III LLC ("Holdco") as a Delaware limited-liability company for purposes, among others, of acquiring from the Adelphia Affiliates essentially all of the assets used by them in Vermont to build and operate cable television systems. Pet. at 4; Hackley pf. at 4.

B. The Transactions

8. Adelphia Communications Corporation and the Adelphia Affiliates have filed for bankruptcy reorganization under Chapter 11 of Title 11 of the United States Code. Pet. at 2.

9. As part of the reorganization proceedings, Adelphia Communications Corporation solicited proposals to purchase the assets of, among other entities, the Adelphia Affiliates. *Id.*

10. Time Warner Cable and Comcast submitted a joint bid to purchase essentially all of the cable television franchises owned by Adelphia Communications Corporation and its affiliates throughout the country. Hackley pf. at 4.

11. Various affiliates of Time Warner Cable and Comcast will acquire the assets of certain of Adelphia's cable systems, and these systems, along with some cable systems that each company already owns, will be exchanged with the other company under an Exchange Agreement. *Id.*

12. Holdco is one of the entities organized by Time Warner Cable (through its indirect subsidiary, Time Warner NY Cable LLC) to effect these transactions and is the entity that will acquire the Adelphia Affiliates' Vermont assets. *Id.*

13. Contemporaneously (and in direct succession) in a separate transaction, Comcast will acquire all the voting securities of Holdco and thereby take control of the company that will then

5. Mr. John Fogarty, Vice President and Assistant General Counsel of Time Warner Cable, adopted Mr. Rosenblum's testimony, which for purposes of identification is referenced herein as "Rosenblum pf."

own substantially all of the assets used by the Adelphia Affiliates today to provide cable television service in Vermont. *Id.* at 5.

14. While it is the expectation of the parties that the two transactions will occur contemporaneously (and in direct succession), it is possible that the Adelphia acquisitions by Time Warner Cable and Comcast will occur but that any or all of the exchanges planned by them will not occur. *Id.*

15. The parties' intention is that most Adelphia assets in the New England/Northeast region will be acquired by Time Warner Cable and that control of these systems will then be exchanged with Comcast, which would lead to a better grouping of Comcast's systems in the area. *Id.* at 5 6.

16. Comcast, for example, has franchises in New Hampshire, Massachusetts, and Connecticut. *Id.* at 21; Lackey pf. at 22.

17. Grouping of systems in regions has a number of advantages, including cost savings, infrastructure efficiencies and marketing efficiencies that will foster greater competition with national satellite-service providers and incumbent telephone companies. Hackley pf. at 6.

C. Substantial Compliance with Existing Franchise and with Applicable Law

18. Comcast, Time Warner Cable, and their affiliates, including Holdco, do not currently have any franchises in Vermont and accordingly this federal criterion is not applicable. *See* Pet.

19. Notwithstanding, Comcast and Time Warner Cable have a record of meeting their franchise commitments, and no record evidence establishes that their respective companies do not comply with applicable law and fulfill their franchise commitments. Hackley pf. at 19; *see generally* FCC Form 394, exh. 5 and 6.

20. Comcast and Time Warner Cable are in substantial compliance with the terms of existing franchises and applicable law. Findings 18 19, *supra*.

D. Quality of Service**(1) Section 504(b)(2): Designation of adequate and technically sound facilities and equipment**

21. With one exception, the existing systems of the Adelphia Affiliates in Vermont have been upgraded to at least 750 MHz, and Holdco has proposed CPG conditions requiring it to finish building approximately 1,262 miles of new line extensions previously identified by the Adelphia Affiliates by December 31, 2008, and up to 300 miles of additional extensions to be built by December 31, 2009, all of which will be built to 860 MHz. Exh. TWC/Comcast 2.

22. The existing systems will allow Holdco to provide facilities, equipment, and signal quality that is adequate today because Holdco will use already-installed equipment acquired from the Adelphia Affiliates, and the equipment is comparable to the best equipment used by cable systems operated by both Comcast and Time Warner Cable and other carriers throughout the country. Hackley pf. at 9; Lackey pf. at 21; *see generally* exh. TWC/Comcast 1, Supplementary Questionnaire.

23. Comcast Corporation has spent nearly \$8 billion over the past two years in capital improvements. Hackley pf. at 18 19.

24. Time Warner Cable has similarly invested billions of dollars in recent years to rebuild and upgrade its cable systems and related equipment. Rosenblum pf. at 4.

25. Over the long term, Holdco will construct facilities and use equipment that are adequate and technically sound. The service-quality results reported to the Department and the level of consumer complaints made directly to the Department will likely reveal any degradation in service that might result from use of inadequate facilities. Lackey pf. at 23.

26. A portion of the Newport system is two-way capable but built to 550 MHz. *Id.* at 26.

27. The Newport system is the only Adelphia system currently operating at 550 MHz. All other systems operate at 750 MHz and line extensions are being built at 860 MHz. Lackey pf. at 24 25; tr. 10/26/05 at 27 (Reilly); Hackley pf. at 9.

28. A 550 MHz cable television system can provide a number of advanced services, such as High Definition (or "HD") and Internet access, but on a more limited basis. Reilly pf. at 10; Lackey pf. at 25; tr. 10/26/05 at 27 (Reilly).

29. The Newport system carries five HD channels as compared with fourteen or fifteen on Adelphia's other systems, and it does not yet provide Video-On-Demand ("VOD") service. Reilly pf. at 10; Lackey pf. at 25.

30. Holdco should upgrade the Newport system to 750 MHz bandwidth or more within a reasonable period after closing the acquisition unless it can demonstrate that the system is otherwise capable of offering VOD service equivalent in scope and features to the service it offers elsewhere in Vermont and unless it offers to Newport subscribers at least three-fourths of the maximum number of High Definition channels Holdco then offers elsewhere in Vermont. Holdco should report to the Board and Department the completion date of any such upgrade, or shall report within a reasonable period of closing the acquisition and each two years thereafter that VOD and High Definition programming are offered in Newport at the levels required for deferral of the system upgrade. Lackey pf. at 24-29.

Discussion

The Department recommended that Holdco's CPG be conditioned to require it to upgrade the Newport system to 750 MHz within two years unless Holdco shows that it is otherwise providing to Newport VOD services comparable to services offered, and at least three-quarters of the HD channels provided, elsewhere in Vermont.⁶ In the Settlement, Holdco agreed that it would upgrade the Newport system to 750 MHz if, by December 31, 2009, the Newport system is not capable of providing (1) HD and VOD services equivalent in scope and features to the VOD service Holdco offers elsewhere in Vermont, and (2) at least three-quarters of the maximum number of HD channels the company offers elsewhere in Vermont. We have not accepted the Settlement; however, we are persuaded by the Department's testimony that provision should be made to avoid leaving the Newport system behind, and we view the Settlement as an indication that a four-year period will allow enough time for Holdco to provide a level of service in Newport comparable to that in the rest of its systems.⁷ Therefore, we will include a condition to this effect in the CPG that we issue to Holdco.

6. Lackey pf. at 24-28.

7. Exh. Joint 1, ¶ 71; tr. 10/26/05 at 27-28, 50 (Reilly); Lackey pf. at 24-28.

Findings

31. As conditioned above, Holdco will have adequate and technically sound facilities, equipment, and signal quality. Findings 21–30, *supra*.

(2) Section 504(b)(4): Prohibition of discrimination among customers of basic service

32. Holdco will provide its basic cable service at uniform rates in accordance with applicable law, although it may offer promotional discounts and negotiate from time to time discounted contracts with businesses and institutions. Hackley pf. at 10.

33. Employees also receive discounts for cable service, a common practice in the industry. *Id.* at 10.

34. The Department has no evidence to suggest that Holdco's commitment with respect to uniform rates is not adequate to comply with the requirements of 30 V.S.A. § 504(b)(4). Frankel pf. at 33.

35. Except as permitted by federal and state law, Holdco will not discriminate among customers of basic service. Findings 32–34, *supra*.

(3) 30 V.S.A. § 504(c)(1): Reasonable quality of service for basic, premium or otherwise, having regard to available technology, subscriber interest, and cost

36. Holdco will provide high-quality service and channels, having regard to available technology and subscriber interests and costs, because it will be controlled ultimately by companies, either Comcast Corporation or Time Warner Cable, that have historically demonstrated their financial stability and sound management. Hackley pf. at 10–11; Rosenblum pf. at 3–5.

37. Comcast Corporation's systems nationwide ("Comcast Systems") now provide digital cable service to 8.8 million subscribers, representing over 40% of the systems' cable-customer base. Hackley pf. at 11.

38. The Comcast Systems' digital-cable services normally provide more than 250 channels nationwide, including dozens of commercial-free premium movie channels and over 40

commercial-free music channels, as well as electronic programming guides that offer improved navigation functionality and parental-control technology. *Id.*

39. The Comcast Systems currently provide over 90% of their customers with as many as 15 HD channels including (in most areas) all of the major broadcast networks as well as PBS, ESPN, HBO, Discovery HD, and other familiar services (up sharply from four years ago when only 15% of the Comcast Systems' customers could receive HD service). Approximately 1.5 million subscribers had HD service as of March 2005. *Id.* at 12.

40. The Comcast Systems have been at the forefront of deploying innovative digital and broadband services, such as VOD and wireless broadband, and the Comcast Systems offer "On Demand" VOD service to cable systems passing approximately 34 million homes. *Id.*

41. The Comcast Systems' VOD content contains more than 2,000 hours of programming, over 70% of which is not charged to digital-cable customers, and by the end of 2005 subscribers will be able to choose from up to 10,000 television programs, new movies, and "library" titles (for example, classic movies and select children's programming). *Id.* at 13.

42. The Comcast Systems' high-speed Internet service currently has 7.4 million customers and is available to 40 million homes; its customers enjoy broadband with speeds of up to 6 Mbps downstream and 768 Kbps upstream. The speed of the Comcast Systems' cable-modem service has quadrupled in the last four years. *Id.* at 14.

43. The Comcast Systems are providing facilities-based telephone service to approximately 1.225 million customers. *Id.* at 15.

44. Comcast Corporation elected not to expand its systems' circuit-switched offerings during the past few years, but instead focused on launching a new Internet-protocol cable-phone service, and it plans full deployment of this service to all of the current Comcast Systems by the end of 2006. *Id.*

45. The new service Comcast Digital Voice relies on the high-speed data network of the Comcast Systems, rather than the public Internet, to ensure voice quality and reliability and deliver features that compete well with traditional, circuit-switched, phone service; as Comcast Digital Voice becomes established, the Comcast Systems intend to offer such innovations on its

systems as television caller ID, voice-activated dialing, video-phone service, unified messaging, and anywhere account access. *Id.*

46. Time Warner Cable similarly has significant experience operating large, technologically-advanced cable systems, and nearly all of its systems have been upgraded to at least 750 MHz. Rosenblum pf. at 4.

47. Time Warner Cable provides enhanced video service over almost all of its systems, including digital cable, VOD, HD television, and digital-video recorders, and it offers advanced broadband services in nearly all of its systems. *Id.*

48. Time Warner Cable typically makes available more than 250 channels of programming. *Id.* at 5.

49. Time Warner Cable has been a leader in the deployment of digital phone services, which as of December 31, 2004, were available to at least two-thirds of the homes passed by Time Warner Cable's systems. *Id.* at 4.

50. Holdco has promised to continue offering all of the same systems, facilities, and services currently offered by the Adelpia Affiliates, which today meets the requirements for issuance of a CPG. Frankel pf. at 8 9.

51. Throughout the New England region, Comcast appears to be aggressive in its roll-out of VOD, is increasing its cable-entertainment as well as its high-speed Internet service offerings, and offers telephony, a service that the Adelpia Affiliates do not offer in Vermont. *Id.* at 9 10.

52. Adelpia currently offers FM radio rebroadcast service in Bennington, Brattleboro, Lebanon, New Hampshire (serving Hartland, Hartford, and Norwich, Vermont areas), Montpelier, Newport, Rutland, Springfield and Williston. Adelpia pulls in FM signals it can get off the air at its head end and rebroadcasts these signals so they can be accessed via cable connected to a radio. *Id.* at 11.

53. The FM radio rebroadcast service is uniquely important to Vermont consumers because the state's topography prevents many consumers from pulling Vermont-based FM stations off the air. *Id.* at 12.

54. Many cable companies offer radio packages, but those offerings cannot substitute for the local medium which broadcasts local school closings, local sports results, local news, and other local programming of interest to Vermont residents. *Id.*

Discussion

Since Holdco has agreed to accept all of the conditions imposed upon Adelphia in its various CPGs, and since Adelphia is presently required to offer FM rebroadcast service in many of its systems, that service will continue in the short term. Holdco must ensure that its customer service representatives handling calls from Vermont have sufficient training to respond effectively to questions about the FM rebroadcast service. In addition, Holdco may not eliminate FM rebroadcast service except upon forty-five days' advance written notice to the Department and the Board. This provision gives the company flexibility to determine its service offerings while providing the Department an opportunity to inquire about the reasonableness of removing the service.

Findings

55. Holdco will continue operating the Adelphia channel which consists of primarily Vermont-related programming immediately after the acquisition, but long-term plans for the channel are unknown at this time. The company wants the flexibility to change programming to meet consumer needs and interests. Tr. 10/26/05 at 26, 32-33 (Reilly).

56. Comcast currently operates a New England regional channel called "CN8." The channel offers a range of programming of interest to consumers of Comcast's New England cable systems, as well as its systems in Pennsylvania, Delaware, Maryland, and New Jersey. Hackley pf. at 23.

57. Holdco will provide a channel with a reasonable amount of Vermont-related programming on its Vermont systems after the acquisition. This commitment will ensure an adequate amount of local and state programming. Findings 55-56, *supra*.

58. At least annually, Holdco should report to the Board and the Department on services that are being provided to customers of Holdco systems in the New England region but that are not

available to Vermont customers. If some services are available to one-half or more of Holdco's non-Vermont customers in the New England region that are not offered in Vermont, the Department may petition the Board to require Holdco to either justify the disparity or make those services available here. Frankel pf. at 17 18.

Discussion

As the Department's witness suggested, we find that Holdco should be required to notify the Board and the Department every two years as to any services offered to one-half or more of the non-Vermont subscribers in its New England region that are not being offered in Vermont. We will include in a condition to the CPG a process under which Holdco must offer the service in Vermont unless it demonstrates that it cannot recover its incremental capital and operating costs within four years of completing the roll-out of the service in Vermont.

Findings

59. Time Warner Cable has committed to accept all of the CPG conditions accepted by Comcast for Holdco. Fogarty reb. pf. at 2.

60. Holdco will provide a reasonable quality of service for basic service, premium service and otherwise, having regard to available technology, subscriber interests and cost. Findings 36 59, *supra*.

(4) Section 504(c)(2): Construction, including installation, which conforms to all applicable state and federal laws and regulations and the National Electric Safety Code; Board Rule 8.214(B)(8): Quality of engineering and materials used in the system

61. The Adelphia Affiliates have built and are building their systems to meet applicable laws and regulations including the National Electric Safety Code ("NESC"), and Holdco has committed to meet these requirements and the NESC. Hackley pf. at 16.

62. The Department has not in recent years had any reason to doubt the quality of the Adelphia Affiliates' engineering or the materials it used. Lackey pf. at 20 21; *see generally* exh. TWC/Comcast 1, Supplementary Questionnaire.

63. As Holdco will acquire the Adelphia Affiliates' Vermont-located plant and intends initially to operate the Vermont systems without major modifications, the transfer of control should have no immediate adverse effect on the quality of engineering and materials used in the system. Lackey pf. at 21.

64. Holdco's construction and installation of equipment and facilities will conform to all applicable state and federal laws and regulations and to the NESC. Findings 61–63, *supra*.

(5) Section 504(c)(3): Competent staff sufficient to provide adequate and prompt service and respond quickly and comprehensively to customer and Department complaints and problems; Rule 8.214(B)(6): Consumer policies particularly re: complaints and problems

65. Comcast has accepted essentially all of the consumer-protection conditions imposed on the Adelphia Affiliates and other cable operators in Vermont designed to ensure good service and address complaints by consumers and the handling of those complaints by the Department. Hackley pf. at 3; Hackley supp. pf. at 1–3.

66. Holdco has accepted a current Adelphia CPG condition that will require Holdco to employ a Regulatory Affairs Manager. Frankel pf. at 26; tr. 10/24/05 at 54–55 (Reilly).

67. Holdco has agreed to a condition (not currently applied to the Adelphia Affiliates) that sets standards for reading-level and readable-type sizes for Holdco notices to consumers. Frankel pf. at 27.

68. Holdco has accepted a requirement that it inform regulators about major changes in the delivery of customer service. *Id.* at 23–24.

69. Holdco's proposed CPG contains a condition governing the time by which Holdco must respond to formal complaints communicated by the Department to Holdco. Exh. TWC/Comcast 2 (¶¶ 42–43).

70. Consumers seeking to purchase basic service might be confused if the word "Basic" were used to describe a service other than Holdco's lowest-cost service. Frankel pf. at 24–25.

71. Comcast uses the term "Expanded Basic" in other New England states to describe the next tier of its service—part of its "Standard Cable" service which includes Basic service and Expanded Basic service—and wants to have the ability to use in Vermont the service names it

uses elsewhere because the company advertises region-wide and because using the same names for services in the region will help customer-care representatives, at various regional call centers, to communicate clearly with subscribers from all of the region's states. Reilly reb. pf. at 3 4; tr. 10/26/05 at 18 (Reilly).

72. Holdco has committed to use the word Basic to describe a service other than its lowest-cost service only if it uses an adjective preceding the term "Basic" that a reasonable consumer would understand describes a service that costs more than Basic, such as "Expanded." Tr. 10/26/05 at 18 21 (Reilly).

Discussion

We conclude that the commitment by Holdco always to include the word "Expanded" when referring to a service that costs more than the lowest service tier provides sufficient protection to consumers. However, as was noted during the technical hearing ⁸ there may be a limitation on the use of the term "basic."

(3) the term "basic cable service" means any service tier which includes the retransmission of local television broadcast signals.

Cable Act of 1984 § 602, 47 U.S.C. § 522. We have no information as to whether there may be broadcast channels on the "Expanded Basic" tier that Comcast offers, so we cannot tell whether Comcast's use of this term complies with the federal law.

Findings

73. Although Holdco did not propose a Service Quality and Reliability Plan, it ultimately agreed to adopt the plan recommended by the Department. Truman pf. at 6 7; Reilly pf. reb at 3.

Discussion

We will require Holdco and the Department to file an agreed form for the Service Quality Plan within 60 days of the date of this Order.

8. Tr. 10/26/05 at 21.

Findings

74. Holdco accepted all of the other condition modifications proposed by Mr. Truman on behalf of the Department. *See* Reilly reb. pf. at 3, 13; *see generally* Truman pf.

75. Comcast has made significant efforts to improve the quality of its customer service. Hackley pf. at 17.

76. Initially, Holdco will continue to use the Adelphia system for customer service, which has been determined to meet the requirements of the statute. *See* Frankel pf. at 28.

77. There is no reason to believe, based on the infrastructure Holdco will have acquired and its track record in other franchise territories, that it will not meet the Board's customer-service criteria after acquisition. *See id.*

78. Holdco will provide call centers that ensure prompt call answering as well as a system for providing installation and repair. *See id.*

79. As conditioned above, Holdco will have a competent staff sufficient to provide adequate and prompt service to respond quickly and comprehensively to customer and Department complaints and problems. Findings 65 78, *supra*.

(6) Section 504(c)(4): An office should be open during usual business hours, have a listed toll-free telephone so that the complaints and requests for repairs or adjustments may be received

80. Holdco will have customer care centers that respond to toll-free calls 24 hours a day, 7 days a week. Frankel pf. at 28.

81. After acquisition of the Adelphia Affiliates' assets, Holdco will maintain all the offices that the Adelphia Affiliates now maintain in the state, which are generally open between 8:30 a.m. and 5:00 p.m., and customers will continue to call the Adelphia call centers at 1-888-683-1000. Hackley pf. at 18; Frankel pf. at 32 33.

82. Like Adelphia, Holdco should have flexibility to make changes in their offices (open new ones, close existing ones, alter hours, etc.) so long as Holdco continues to meet the criterion of § 504(c)(4). Frankel pf. at 31 32.

83. Holdco will maintain offices open during usual business hours and have a listed toll-free telephone number so that complaints and requests for repairs or adjustments may be received. Findings 80-82, *supra*.

(7) Section 504(c)(5): Reasonable rules and policies for line extensions, disconnections, customer deposits and billing practices

84. Holdco will adopt and maintain rules and policies for disconnections, customer deposits, billing practices, and customer aid-in-construction policies that are consistent with the Board's rules. Hackley pf. at 18.

85. Holdco has accepted all of the Adelphia Entities' existing CPG conditions that apply to line extensions. *Id.* at 4; Lackey pf. at 14.

86. Holdco has also accepted certain modifications to these conditions for line extensions proposed by the Department. *See* Lackey pf. at 15-20; Reilly reb. pf. at 3.

87. Comcast's and Time Warner Cable's track records in other jurisdictions provide no evidence to suggest that Holdco will not or cannot comply with rules and regulations governing line extensions, disconnection, customer deposits and billing practices. Frankel pf. at 29.

88. Holdco will have reasonable rules and policies for line extensions, disconnections, customer deposits and billing practices. Findings 84-87, *supra*.

(8) Rule 8.214(B)(7): Availability of service and maximum number of residences

89. Holdco's service will be available to a maximum number of residences as determined by the Adelphia line-extension policy, which will be adopted by Holdco. *See* Findings 21-34, *supra*; *see also* Findings 108-110, *infra* (concerning Holdco's acceptance of Adelphia's commitments to build line extensions.)

E. Financial, Legal, and Technical Ability

(1) Rule 8.214(B)(1): Financial soundness and stability, both of the applicant generally and the particular proposal; Rule 8.214(B)(4): Experience and ability of the applicant to run and manage a cable television system

90. Comcast Corporation is financially strong and stable. Hackley pf. at 20; *see* exh. TWC/Comcast 1, exh. D (Comcast Annual Report).

91. Through its subsidiaries, Comcast Corporation will provide financial support as necessary to ensure that its systems, including Holdco, provide a quality of service that is competitive. Hackley pf. at 20.

92. Standard & Poor upgraded Comcast Corporation's debt rating from BBB to BBB+ on June 14, 2005, citing factors such as the company's improved operating earnings. *Id.*

93. Comcast (as noted) is the largest cable system in the nation, serving 21.5 million customers. Finding 5, *supra*.

94. Comcast is a capable and experienced cable operator and should be able to run and manage the Vermont systems as well as or better than has Adelphia. Martin pf. at 4.

95. Time Warner Cable, as well, is financially strong and a subsidiary of a larger, financially strong corporation, Time Warner Inc. *See* exh. TWC/Comcast 1, exh. D (Time Warner Inc. Annual Report).

96. Time Warner Cable serves approximately 10.9 million subscribers in 29 states. Rosenblum pf. at 4.

97. Comcast and Time Warner Cable have the financial, legal and technical ability to own and manage a cable television system. Findings 90-96, *supra*.

F. Holdco's Proposal in Relationship to Future Cable-related Community Needs and Interests, Taking into Account the Cost of Meeting Such Needs and Interests

98. Holdco has agreed to accept all of the existing conditions imposed on the Adelphia Affiliates (other than a few out-dated conditions, such as the maintenance of specific offices, that are not included in recent Board decisions, such as the CPG for *Burlington Telecom*) and to add additional conditions that have been imposed on other carriers in recent CPGs. Hackley supp. pf. at 1-3; Frankel pf. at 32-33.

99. An agreed-upon CPG condition requires Holdco to fund a statewide cable advisory board and request to meet with it annually, while another condition requires Holdco to meet with city and town government officials in its franchise areas bi-annually for the purpose of

exchanging information about community needs and the company's plans. Exh. TWC/Comcast 2 (¶¶ 7 and 8).

(1) Rule 8.214(B)(2): Present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future and the ability to provide public access

100. Comcast has been aggressive in rolling out services, including innovative services, in cable franchises served by Comcast in New Hampshire, Massachusetts, and Connecticut. Hackley pf. at 21; Frankel pf. at 10.

101. Similarly, Time Warner Cable is rolling out services aggressively throughout the country. Rosenblum pf. at 4 5.

102. In view of the substantial investment Holdco will have to make to fulfill Adelphia's line-extension obligations estimated (based on Adelphia's costs) to be at least \$35 million Holdco will have a strong incentive to roll out new services to recover these costs. Hackley pf. at 21; *see* Reilly reb. pf. at 7, 13.

103. At the time it files its annual report (pursuant to 30 V.S.A. § 22) Holdco should report to the Board and the Department on services that are being provided to customers of Comcast systems in the New England region but that are not available to Vermont customers. If there are some such services, the Department may petition the Board to require Holdco to either justify the disparity or make those services available here. Frankel pf. at 17 18; Reilly pf. reb. at 8.

Discussion

The Department originally suggested that Vermonters should be offered services that are available to subscribers in Comcast systems with 500,000 or more customers. In the Settlement, Holdco agreed that it would notify the Board and the Department as to services rolled out to one-half or more of its non-Vermont subscribers in the New England region that are not being offered in Vermont and to a procedure by which the Department can require Holdco to roll the service out in Vermont unless Holdco demonstrates through a business-case analysis that it cannot recover its incremental operating and capital costs within four years. We agree that it is important that Vermont customers not be left behind, and we will include a condition in the CPG

similar to that in the Settlement, which we find to be more reasonable than the Department's original proposal.

Findings

104. Holdco has promised to continue offering all of the same systems, facilities, and services currently offered by the Adelphia Affiliates, which today meets the requirements for issuance of a CPG. Frankel pf. at 8-9.

105. Both Comcast's and Time Warner Cable's systems usually offer 250 or more channels on their digital offerings. Hackley pf. at 11; Rosenblum pf. at 5.

106. Under Board rules, Holdco must reserve three channels for PEG access, and an AMO has the opportunity to ask for additional PEG channels or other PEG applications, with the Board authorized to decide whether the service or functionality should be provided if the AMO and Holdco are unable to reach agreement. Board Rules 8.403, 8.405.

107. Holdco's present proposed service offerings to customers, including the number of channels and the ability and the capacity of the system to offer additional varied services in the future, are adequate, and Holdco will have the ability to provide public access. Findings 100-106, *supra*.

(2) Rule 8.214(B)(3): Commitment to a construction and in-service schedule

108. Holdco will be bound by the same conditions that apply to the Adelphia Affiliates with respect to the line extensions that must be built under Rule 8.214, as specified in the stipulation approved in Docket Nos. 6445 and 6877. Hackley pf. at 4; Lackey pf. at 13-14.

109. This commitment involved line extensions totaling 1,262 miles by the end of 2008, plus between 150 and 300 miles of additional line extensions by the end of 2009, and is backed by a significant bond. Exh. TWC/Comcast 2 (¶ 39); *see* Lackley pf. at 13.

110. Holdco is aware of the magnitude of capital expenditures that will be necessary to complete construction of the remaining line extensions. Lackey pf. at 14.

Discussion

Holdco has acknowledged that Adelphia undertook in 2003 construction of some line extensions that were identified, in Attachment A to a Stipulation between Adelphia and the Department of Public Service, as Remaining Docket 6445 Line Extensions. Holdco acknowledges that any of the Remaining Docket 6445 Line Extension miles built by Adelphia in 2003 cannot be counted towards any of Holdco's cumulative Milestones until the final year of construction; provided, however, that to the extent Adelphia constructed and activated more than 60 such line extension miles by December 31, 2003, then any incremental amount over and above 60 miles could be counted toward Adelphia's 2004 Milestone which affects cumulative Milestone obligations of Holdco.⁹

Finding

111. Holdco has demonstrated a commitment to construction and an in-service schedule. Findings 108 110, *supra*.

(3) Section 504(b)(5): Basic service in a competitive market; Rule 8.214(B)(5): Tariffs and rates proposed to be charged to customers

112. Holdco intends to offer basic service. Martin pf. at 5; tr. 10/26/05 at 19 21 (Reilly).

113. Holdco has promised to file with the Board tariffs and individual customer agreements for its cable services to the extent required by Vermont law, and the Board's tariff-review process offers an opportunity to assure that any subsequent revisions that Holdco may propose to its services, terms, and conditions are reasonable. Exh. TWC/Comcast 2 (¶ 3); Reilly reb. pf. at 11; Martin pf. at 4.

Discussion

The Board's authority, however, to revise cable rates or suspend changes in rates proposed by a cable operator has, for the most part, been preempted by federal law. The FCC has previously concluded that Adelphia faces effective competition in most of its Vermont service

9. Exh. TWC/Comcast 2.

market, and this finding will transfer automatically to Holdco, thereby preempting the Board's authority to set prices for basic cable service. Holdco shall file tariffs stating the rates proposed to be charged to customers for its cable services.

Findings

114. Holdco will provide Basic service in a competitive market. Findings 112 113, *supra*.

(4) Rule 8.214(B)(9): Logical fit with neighboring systems

115. Comcast's acquisition of Adelphia's Vermont assets through Holdco would incorporate the Vermont systems into a much larger cluster that includes much of Massachusetts and southern New Hampshire. Lackey pf. at 22.

116. Holdco will not alter the existing Adelphia territory or change the geographical relationship of these systems to those operated by other companies. *Id.*; see Docket Nos. 6101 and 6223, Order of 4/28/00 at 143 44.

117. Holdco's system has the capability to fit logically with neighboring systems. Findings 115 116, *supra*.

(5) Section 504(b)(1): Designation of adequate channel capacity and appropriate facilities for PEG use; Section 504(b)(3): Reasonably broad range of PEG programming

118. Rule 8.400 requires a cable operator to reserve three channels for PEG and allows for the designation of additional channels or provision of other applications if certain criteria are met, including a demonstration of community needs and interests taking into account the costs. Board Rules 8.403, 8.405.

119. Holdco proposed to have the same PEG conditions that apply to the Adelphia Affiliates be part of Holdco's CPG, except that Holdco modified these conditions to reflect the fact that the Board revised Rule 8.400 subsequent to imposition of these conditions on the Adelphia Affiliates. Hackley pf. at 21; Hackley supp. pf. at 2; tr. 10/26/05 at 62 63 (Reilly).

120. Holdco will form a statewide advisory board and meet with city and town officials bi-annually to obtain input on community needs and interests. Exh. TWC/Comcast 2 (¶ 7).

121. Holdco has committed to proposed CPG conditions requiring it to comply with Rule 8.400 and assume and be subject to liability under the Adelphia Affiliates' existing contracts with AMOs if and to the extent the Adelphia Affiliates are liable. Reilly reb. pf. at 14 15, 20 21.

122. To the extent AMOs seek funding, including capital funding, or other cable channels or application not already required under a condition to the Adelphia CPG, Rule 8.400 provides a procedure by which an AMO can seek to negotiate the provision of such channels or application from Holdco and appeal the matter to the Board if the AMO is not satisfied with Holdco's response. *Id.* at 15; *see* Board Rules 8.405, 8.416, 8.417, 8.435(C).

123. Contracts between Holdco and the AMOs are the appropriate documents in which to memorialize the obligations of Holdco and the AMO to one another. Lackey pf. at 38.

124. Among other benefits, this approach allows for periodic revision without necessitating a Board investigation to amend the Holdco CPG. *Id.*

125. Under the terms of Holdco's proposed CPG, Holdco must provide fiber-optic or coaxial-cable drops, capable of two-way service and remote origination service, upon request, at every school, library, and PEG-access studio, and to at least one municipal building in a municipality in which Holdco is obligated to provide cable service. Exh. TWC/Comcast 2 (¶ 20).

Discussion

The testimony on the subject of remote origination was unclear; we suspect that the parties did not actually understand each other's positions. Holdco's witness was emphatic¹⁰ that Holdco would not install remote origination equipment at all of the sites called for in Finding 125, expressing concern that the cost of such equipment would not be justified by the level of use to be expected. However, testimony by VAN's witness¹¹ made it clear that the only equipment that Holdco is expected to provide at each site is the connection; the request for automatic switching capability would be satisfied by a single installation of switching equipment at the AMO's studio, plus some sort of signaling gear that would be brought on-site and connected during live broadcast, then removed. VAN is correct that many remote-origination sites are

10. Reilly pf. reb. at 18 19.

11. Tr. 10/24/05 at 120 125 (Epler Wood).

required, but Holdco is correct that actual installation of costly equipment must depend on the cost/benefit analysis of Rule 8.400. Finally, contrary to the testimony of an Adelphia witness, we think it is clear that the provision of two-way service to various sites required in Finding 125 means that they are to be capable of remote origination, not merely of signaling through a return path.

Findings

126. Holdco should be required to negotiate with the operator of an overbuild on technical matters, such as interconnection. Either operator could then appeal to the Board if no agreement is reached or, if an agreement is reached, an AMO could appeal to the Board if the AMO is not satisfied that the agreed terms will ensure that each operator will fulfill its respective PEG obligation under Vermont or federal law. Tr. 10/26/05 at 22 23, 36 37 (Reilly).

Discussion

The Department proposed a condition that would require Holdco to offer PEG services comparable to any operator that overbuilds Holdco's system, which was designed to ensure competitive neutrality.¹² Holdco was concerned that this condition would require it to provide services to which it had not agreed and believes that, in a competitive-overbuild situation, issues about PEG should be addressed through Rule 8.400, and we agree.¹³

Findings

127. It is not unreasonable for a non-profit organization like an AMO to have a cash reserve on hand, and the cable operator should not regard the mere existence of such a reserve as a reason to reject a request for additional funding under Rule 8.405. Such a reserve fund should not exceed 50% of the average of the past three years of operating and capital funds, and the AMO should be able to demonstrate its plans for the use of these funds, consistent with its strategic plan. Davitian pf. at 7, 33 36; exh. VAN 21.

12. Lackey pf. at 42.

13. Reilly reb. pf. at 5.

128. It is reasonable for the AMOs to now request connection to the higher speed commercial service, as they make ever-increasing use of digitally formatted materials. Epler Wood pf. at 20 22.

Discussion

Two recommendations of VAN are not in dispute. VAN seeks to ensure that CPG conditions bind Holdco to comply with Rule 8.400 and to assume the Adelphia Affiliates' liabilities under AMO contracts.¹⁴ Holdco has accepted those obligations.

VAN also seeks to have the Board impose a condition that would ensure that Holdco matches Adelphia's current obligations with respect to PEG access. Holdco has agreed to accept a CPG that matches the existing Adelphia PEG obligations, and we find that such a condition is warranted.¹⁵

VAN asks for a condition similar to that included in the Adelphia CPG that would require a re-evaluation of the AMOs' requirements for digital equipment and corresponding "spike" capital payments to upgrade equipment. Holdco's proposed CPG included a single evaluation in 2006; the Department recommended eliminating this requirement altogether, relying instead on Rule 8.400. The problem with fixing a particular year for the digital evaluations is that there is no way of predicting when major changes in the operation of the cable systems will take place, only that such changes are likely to take place. It will be to the advantage of Holdco as well as the AMOs if the PEG programming can be carried on a digital tier; it would not be surprising if all programming is digital before the end of the CPG issued here. We agree with VAN that there should be two re-evaluations of the need for different digital equipment.¹⁶

Holdco proposed to continue the condition from the Adelphia Docket 6101 CPG that called for the operator to provide 5 MB storage on its server to each AMO. VAN suggests that this be increased to 1 GB. We find Holdco's offer inadequate, considering the price of storage;

14. Davitian pf. at 6 7; Reilly reb. pf. at 14, 23 24.

15. Davitian pf. at 6; tr. 10/26/05 at 62 63 (Reilly).

16. Davitian pf. 20 21; exh. TWC/Comcast 2; see exh. DPS DLF 2.

5 MB is barely enough to store a single song in mp3 format.¹⁷ We will require Holdco to provide 1 GB of internet storage space to each AMO.

The language suggested by VAN for the statewide access channel is actually more restrictive than that in the Adelphia CPG, since it now clearly contemplates that the access "channel" is really a file-sharing network for the AMOs. The condition agreed to by Adelphia could well have required a separate, viewable PEG channel on all the affected systems.

VAN asked for a condition mandating negotiation of a standard form of AMO contract within 120 days of our issuance of a CPG.¹⁸ We welcome any efforts by Adelphia or Holdco and the AMOs to negotiate a standard form of contract but decline to mandate any time period in which the negotiations must conclude.

VAN has asked that each AMO receive commercial class internet service without charge. The Docket 6101 CPG already required "high-speed Internet access" to each AMO, school, and municipality. In this context, "high-speed" access was in contrast to dial-up. Holdco has argued that we should not require commercial-grade internet connections for the AMOs because we lack jurisdiction to regulate the provision of high-speed, Internet-access service in light of a recent decision from the Federal Communications Commission. *In re Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities*, 17 FCC Rcd. 4798, 2002 WL 407567 (2002), *aff'd Nat'l Cable Telecomm. Ass'n v. Brand X Internet Servs.*, U.S. , 125 S.Ct. 2688 (2005) [referenced herein as *Brand X*]. That decision held that the provision of such service via a cable modem is an "information service" and not a "telecommunications service" within the meaning of the Telecommunications Act of 1996. *Brand X*, 125 S.Ct. at 2697; *see* 47 U.S.C. §§ 153(20), 153(26) (2005). But no one is asking this Board to regulate internet access; we are asked to require Holdco to provide a modem and internet access to certain entities as part of its PEG access requirements. The Board does not claim to regulate cable modems, but Holdco has not argued that we cannot mandate their provision to the AMOs and others.

We recently said, in adopting the Hearing Officer's proposed decision in *Burlington Telecom*:

17. Exh. TWC/Comcast 2 (¶ 21); Epler Wood pf. at 22-23.

18. Davitian pf. at 6-7.

In the past, the Board has incorporated extensive and specific PEG access requirements into CPG's issued to cable operators. However, since those Orders, the Board substantially revised its rules relating to cable television, including Rule 8.400 relating specifically to PEG access. The new rules were effective on March 1, 2005. Continuation of the practice of including all PEG access requirements in a cable operator's CPG diminishes the effectiveness of the framework established in the new Rule 8.400 and, therefore, the Board should include only those PEG access requirements that are imposed outside of the negotiations and requirements of the Rule.

Burlington Telecom at 31¹⁹ (internal citations omitted). The Department has taken this language to mean that many of the provisions of the CPGs issued in recent Adelphia cases, especially Docket 6101, have now been obviated by Rule 8.400. To a certain extent this is true. We will no longer set out PEG requirements in great detail as was our past practice, but only such general terms as seem necessary. However, Burlington Telecom was a newly formed company, without any history of strained relations with regulators or the PEG groups. Many of the conditions requested by VAN in this case relate to conditions imposed upon Adelphia either because of past inaction (or worse) by Adelphia or because VAN (or certain member AMOs) persuaded the Board that they would promote the general good. It was because the Settlement would have swept away much of the hard-won protection for the AMOs that we have rejected it.

Findings

129. Holdco has designated adequate channel capacity and appropriate facilities for PEG use that provides a reasonably broad range of PEG programming. Findings 118-128, *supra*.

G. Town of Brattleboro

The Town of Brattleboro prefiled testimony in which it (1) stated that its principal objective is to ensure that Holdco will continue to comply with the Adelphia Affiliates' obligations to Brattleboro, such as line extensions; (2) urged that we require Holdco to continue to provide Brattleboro's existing PEG service to certain neighboring jurisdictions in New Hampshire; (3) said that it intended to pursue the process for requests for proposals established

19. We note that we have not received a petition to form a statewide AMO under Rule 8.425.

by the Adelphia Affiliates' CPG (and included in the CPG that Holdco has agreed to accept) for an Institutional Network; and (4) asked for courtesy Internet service to five municipal buildings in Brattleboro.²⁰ During the hearings, the Town raised issues as to whether agreed Condition No. 5 in the CPG included revenue received to provide PEG service to non-Holdco cable companies and as to whether Holdco should be required to build fiber-optic (as opposed to coaxial-cable) facilities for remote-origination ties to the area's PEG provider, BCTV.²¹

To state the obvious, the Board fully intends to enforce Holdco's CPG obligations, including the obligations for line extensions and to respond to requests for proposals for an institutional network. The Adelphia Affiliates are presently in compliance with their line-extension obligations as stipulated and approved in Docket Nos. 6445 and 6877.²²

The Town seemed to be making claims concerning the provision of PEG programming to towns in both Vermont and New Hampshire that do not contribute to the support of the AMOs designated for the Brattleboro system.²³ We will not make findings on these issues because the record is confused, at best. The allegations were made in the form of questions put to a witness for Holdco who, as he stated, had no knowledge of the situation. We encourage Holdco to fully consider the complaint by the Brattleboro AMOs, and to negotiate with them to resolve any problem. Holdco's brief in this docket argues that the Board lacks jurisdiction over cable service in New Hampshire and that at least that issue is moot. We are not convinced that the question is so simply answered, and ask that Holdco take a fresh look. The claim seems to be that some subscribers are benefitting from the programming produced by the Brattleboro AMOs but are not making a contribution. In both the New Hampshire system and the Southern Vermont system, we tend to agree with counsel for Holdco:

At least from the company's perspective if AMO service is provided, somebody, some subscriber, should be paying for it like every other subscriber, but we don't want to pay twice is really our concern.²⁴

20. *See generally* Remillard pf.

21. Tr. 10/26/05 at 39-45 (Billingsley).

22. Lackey pf. at 13-14.

23. Tr. 10/26/05 at 39-45.

24. Tr. 10/26/05 at 48.

Finally, based on the record evidence we are satisfied that it is not necessary to prescribe whether the tie between a remote-origination site and an AMO should be furnished using fiber-optic rather than coaxial-cable facilities, as coaxial cable may be adequate.²⁵ We note again that AMOs and cable operators are expected to negotiate such terms, and Rule 8.400 provides for resolution of such terms if the parties are unable to reach agreement.

H. City of Burlington

The City of Burlington introduced into the record an existing contract between one of the Adelphia Affiliates and the City providing for the payment of an annual fee by that affiliate to the City as well as a discovery response by Holdco to the effect that Holdco is prepared to assume that contract insofar as the fee is used for a City program offering discounts to seniors.²⁶ The City also sought to establish that one of the Adelphia Affiliates may have liabilities to the City under the Burlington Electric Department pole-attachment tariff. Tr.10/24/05 at 49-51 (Reilly).

As Holdco's commitments depend in part on whether the agreements/liabilities are accepted or rejected by Adelphia Communications Corporation as part of its bankruptcy-reorganization plan, we note as to the latter that the City could bring pole-attachment matters to our attention if not resolved satisfactorily after the acquisition.²⁷ As to the annual fee, however, our jurisdiction is limited. While the legality of a senior discount is within our jurisdiction, the amount of a municipal fee or the enforcement of a settlement agreement is not.²⁸

III. CONCLUSION

As summarized in Part I of this decision, we must decide here whether to approve the Adelphia Affiliates' sale of essentially all of the assets used by them to provide cable television service in Vermont to Holdco and at the same time whether to revoke the Adelphia Affiliates'

25. See tr. 10/26/05 at 40-41 (Reilly).

26. Exhs. Burlington 1 and 2; see tr. 10/24/05 at 48 (Reilly). We note that the fee agreement between Mountain Cable Company, L.P., and the City of Burlington does not apply solely to senior discounts. See exh. Burlington 1.

27. See tr. 10/24/05 at 48, 51 (Reilly); Board Rule 3.710.

28. Trybulski v. Bellows Falls Hydro Elec. Corp., 112 Vt. 1, 10 (1941).

CPGs, under 30 V.S.A. §§ 109, 231, and 505. We must further decide whether Holdco meets the criteria established by statute and Board rule to receive a CPG to own and operate a cable television system in Vermont. We must last decide whether Comcast's acquisition of control of Holdco — an indirect subsidiary of Time Warner Cable organized to acquire the Adelphia assets — is not contrary to the public good under 30 V.S.A. § 515.

All parties in this proceeding agreed that the proposed sale was in the public interest, provided that certain conditions were imposed. The disputes in this case were over exactly what conditions should be imposed. We have reviewed the record carefully to satisfy ourselves that Holdco is capable of assuming responsibility for operating the Adelphia Affiliates' existing cable systems in Vermont and to determine what conditions should be imposed on Holdco's CPG.

Of particular importance to the Board is Holdco's commitment to bring broadband to rural Vermont by finishing construction of the 1,262 miles of previously-identified line extensions that the Adelphia Affiliates are obligated to construct — as well as between 150 and 300 miles of additional line extensions that the Adelphia Affiliates are obligated to construct because of their failure to build required line extensions on a timely basis — notwithstanding the fact that neither Comcast nor Time Warner Cable were responsible for the failure of the Adelphia Affiliates.²⁹ Holdco's commitment advances telecommunications policy in Vermont, which is to bring broadband to 90% of Vermonters by the end of 2007 and to achieve universal availability by 2010.³⁰

Holdco has also proposed that all of the Adelphia Affiliates' systems be franchised under a single CPG with a single expiration date.³¹ We agree, as this should simplify the franchise-renewal process as compared to the existing situation, in which the Adelphia Affiliates operate under multiple CPGs with different expiration dates.

In general, we have no difficulty concluding that Vermonters will benefit if Holdco acquires the assets used by the Adelphia Affiliates to operate their cable television systems in Vermont. This conclusion is supported by the facts that Holdco has agreed to accept essentially

29. *See, e.g.*, Hackley pf. at 9.

30. Vermont Telecommunications Plan at ix.

31. *See* Hackley supp. pf.

the same CPG conditions applied to the Adelphia Affiliates, including a commitment to line extensions that Adelphia estimates will cost at least \$35 million, and that Holdco is a financially stronger company. The evidence satisfies us, moreover, that both Comcast and Time Warner Cable are aggressively rolling out new services — such as a VOD program with substantially more titles than the Adelphia Affiliates now offer or telephony which Adelphia does not offer. We conclude that Holdco should receive a CPG.

Time Warner Cable and Comcast intend that Comcast ultimately control Holdco, and they believe it is highly unlikely that Comcast will not acquire control of Holdco contemporaneously and in direct succession with Holdco's acquisition of the Adelphia Affiliates' Vermont assets.³² The Department has indicated in its brief that it has reviewed information about the practices of Time Warner Cable's Albany Division — into which Holdco would be integrated if Comcast does not acquire control — and it is satisfied that Time Warner Cable will be a competent cable operator.³³ No party has presented any evidence that questions either Time Warner Cable's or Comcast's capabilities (through control of Holdco) to own and operate a cable television system in Vermont. Based on all of our findings, therefore, we conclude that transfer of the Adelphia Affiliates' assets in Vermont to Holdco, revocation of their CPGs, and the planned acquisition of control of Holdco by Comcast is not contrary to and will promote the public good of Vermont.

32. Fogarty reb. pf. at 2.

33. *See id.* at 3.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. Subject to the conditions imposed in the Certificate of Public Good that accompanies this Order, the sale of substantially all of the assets of the Adelphia Affiliates³⁴ used to operate their cable television systems in Vermont to Cable Holdco Exchange III LLC will promote the general good of the state in accordance with 30 V.S.A. §§ 109, 232.

2. Effective upon closing of the acquisition of such assets by Cable Holdco Exchange III LLC, all certificates of public good issued to any of the Adelphia Affiliates shall be revoked in accordance with 30 V.S.A. § 505.

3. Cable Holdco Exchange III LLC meets each of the requirements established by 30 V.S.A. § 504 and Board Rule 8.214 to own and operate one or more cable television systems in Vermont, and the Board shall issue a certificate of public good to that effect, which certificate shall take effect upon closing and be subject to each of the conditions stated therein.

4. The acquisition of control of Cable Holdco Exchange III LLC by Comcast of Georgia, Inc., is not contrary to the public good of the state, subject to the conditions imposed in the Certificate of Public Good that accompanies this Order.

5. No later than ten (10) days following the closing of the sale of assets, Cable Holdco Exchange III LLC shall notify the Board and the parties in writing that such closing has occurred, such notice to specify either that Comcast of Georgia, Inc., has acquired control of Cable Holdco Exchange III LLC or that such acquisition has not occurred in which case the notice shall state when such acquisition is expected to take place.

6. No later than sixty (60) days following the date of this Order the Department and Cable Holdco Exchange III LLC shall file an agreed form of the Service Quality Plan.

34. Mountain Cable Company, L.P., a Vermont limited partnership; Better TV, Inc. of Bennington, a Vermont corporation; FrontierVision Operating Partners, L.P., a Delaware limited partnership; Adelphia Cablevision of New York, Inc., d/b/a Adelphia Cable Communications (formerly Harron Communications Corporation), a New York corporation; Lake Champlain Cable Television Corporation, a Vermont corporation; Multi Channel T.V. Cable Company, an Ohio corporation; Richmond Cable Television Corporation, a Vermont corporation; and Young's Cable TV Corp., a Vermont corporation (all d/b/a Adelphia Cable Communications).

Dated at Montpelier, Vermont, this 29th day of December, 2005.

<u>s/James Volz</u>)	
	)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>	)	BOARD
)	
	)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: December 29, 2005

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

Appendix A: Appearances

John H. Marshall, Esq.
Nancy S. Malmquist, Esq.
Suzanne M. Monte, Esq.
Downs Rachlin Martin PLLC
for Time Warner Cable Inc., Cable Holdco Exchange III LLC and Comcast
of Georgia, Inc.

Shapleigh Smith, Jr., Esq.
Dinse, Knapp & McAndrew, P.C.
for Adelfia Communications Corporation

Alan D. Mandl, Esq.
Mandl and Mandl, LLP
for Adelfia Communications Corporation

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
for City of Burlington

Robert M. Fisher, Esq. (not present at hearings)
Fisher & Fisher
for Town of Brattleboro

Douglas R. Marden, Esq.
Little & Cicchetti, P.C.
for Vermont Access Network

Sarah Hofmann, Esq.
Leslie A. Cadwell, Esq.
James H. Porter, III, Esq.
for Vermont Department of Public Service

Appendix B: List of Cities, Towns, and Gores

Vermont cities, towns, and gores presently served by Adelphia under one or more of its CPGs:

Addison, Andover, Arlington, Athens, Avery's Gore,
Baltimore, Barnard, Barton, Belvidere, Bennington, Benson, Berlin, Bethel, Braintree, Brandon,
Brattleboro, Bridgewater, Bridport, Brighton, Bristol, Brookfield, Brookline, Brownington,
Burlington,
Cabot, Calais, Cambridge, Castleton, Cavendish, Charleston, Charlotte, Chester, Chittenden,
Clarendon, Colchester, Cornwall, Coventry, Craftsbury,
Danby, Derby, Dorset, Dummerston, Duxbury,
East Montpelier, Eden, Elmore, Essex,
Fair Haven, Fairfax, Fairfield, Ferdinand, Ferrisburgh,
Georgia, Glastenbury, Glover, Goshen, Grafton, Greensboro, Guilford,
Halifax, Hancock, Hardwick, Hartford, Hartland, Highgate, Hinesburg, Holland, Hubbardton,
Huntington, Hyde Park,
Ira, Irasburg,
Jamaica, Jay, Jericho, Johnson,
Killington,
Landgrove, Leicester, Lewis, Lincoln, Londonderry, Lowell, Ludlow,
Manchester, Marlboro, Marshfield, Mendon, Middlebury, Middlesex, Middletown Springs,
Milton, Monkton, Montpelier, Moretown, Morgan, Morristown, Mt. Holly, Mt. Tabor,
New Haven, Newark, Newport City, Newport Town, Norwich,
Pawlet, Peru, Pittsfield, Pittsford, Plainfield, Plymouth, Pomfret, Poultney, Pownal, Proctor,
Randolph, Reading, Richmond, Ripton, Rochester, Rockingham, Roxbury, Rupert, Rutland City,
Rutland Town,
Salisbury, Sandgate, Searsburg, Shaftsbury, Sharon, Sheffield, Shelburne, Sheldon, Shrewsbury,
South Burlington, Springfield, St. Albans City, St. Albans Town, St. George, Stamford,
Stannard, Starksboro, Stockbridge, Stowe, Strafford, Stratton, Sudbury, Sunderland, Sutton,
Swanton,
Thetford, Tinmouth, Troy,
Underhill,
Vergennes, Vernon,
Walden, Wallingford, Waltham, Wardsboro, Warner's Grant, Warren's Gore, Waterbury,
Waterville, Weathersfield, Wells, West Haven, West Rutland, West Windsor, Westfield,
Westford, Westminster, Westmore, Weston, Weybridge, Wheelock, Whiting, Williston,
Windham, Windsor, Winhall, Winooski, Wolcott, Woodbury, Woodford, Woodstock, and
Worcester

ATTACHMENT 5

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7077

Joint Petition of all Vermont affiliates of Adelphia)
Communications Corporation ("Adelphia") and Time)
Warner Cable Inc. for (1) consent to sell substantially all of)
Adelphia's Vermont assets to Cable Holdco Exchange III)
LLC, (2) approval of such affiliates' abandonment of)
cable-television service in Vermont; and (3) revocation of)
the Docket No. 7077 affiliates' Certificates of Public Good;)
AND Joint Petition of Time Warner Cable Inc. and Cable)
Holdco Exchange III LLC, for a Certificate of Public Good)
for Cable Holdco to own and operate said cable television)
systems; **AND Joint Petition** of Time Warner Cable Inc.)
and Comcast of Georgia, Inc., for authority to acquire)
control of Cable Holdco Exchange III LLC)

Entered: 12/29/2005

CERTIFICATE OF PUBLIC GOOD ISSUED TO CABLE HOLDCO EXCHANGE III LLC
PURSUANT TO 30 V.S.A. §§ 503 AND 504

IT IS HEREBY CERTIFIED that the Public Service Board ("Board") of the State of Vermont on this date finds and adjudges¹ that the issuance of a Certificate of Public Good ("Certificate") to Cable Holdco Exchange III LLC ("Holdco" or "Company"), to serve² the Cities, Towns, and Gores of Addison, Andover, Arlington, Athens, Avery's Gore, Baltimore, Barnard, Barton, Belvidere, Bennington, Benson, Berlin, Bethel, Braintree, Brandon, Brattleboro, Bridgewater, Bridport, Brighton, Bristol, Brookfield, Brookline, Brownington, Burlington, Cabot, Calais, Cambridge, Castleton, Cavendish, Charleston, Charlotte, Chester, Chittenden, Clarendon, Colchester, Cornwall, Coventry, Craftsbury, Danby, Derby, Dorset, Dummerston, Duxbury, East Montpelier, Eden, Elmore, Essex, Fair Haven, Fairfax, Fairfield, Ferdinand, Ferrisburgh, Georgia, Glastenbury, Glover, Goshen, Grafton, Greensboro, Guilford, Halifax, Hancock,

1. This Certificate accompanies an extensive Order, which provides the details for several provisions contained herein.

2. Holdco should be aware that, under long standing Board practice, a certificate for a city, town, or gore is a franchise to serve customers throughout that municipality, subject to the company's line extension tariff and the provisions of the certificate. Any limits that may seem to apply as a result of the Community Unit Identifiers designated by the Federal Communications Commission (*see* Attachment 1 to exh. Joint 1) are artifacts of the FCC's number system, not limitations on this Certificate.

Hardwick, Hartford, Hartland, Highgate, Hinesburg, Holland, Hubbardton, Huntington, Hyde Park, Ira, Irasburg, Jamaica, Jay, Jericho, Johnson, Killington, Landgrove, Leicester, Lewis, Lincoln, Londonderry, Lowell, Ludlow, Manchester, Marlboro, Marshfield, Mendon, Middlebury, Middlesex, Middletown Springs, Milton, Monkton, Montpelier, Moretown, Morgan, Morristown, Mt. Holly, Mt. Tabor, New Haven, Newark, Newport City, Newport Town, Norwich, Pawlet, Peru, Pittsfield, Pittsford, Plainfield, Plymouth, Pomfret, Poultney, Pownal, Proctor, Randolph, Reading, Richmond, Ripton, Rochester, Rockingham, Roxbury, Rupert, Rutland City, Rutland Town, Salisbury, Sandgate, Searsburg, Shaftsbury, Sharon, Sheffield, Shelburne, Sheldon, Shrewsbury, South Burlington, Springfield, St. Albans City, St. Albans Town, St. George, Stamford, Stannard, Starksboro, Stockbridge, Stowe, Strafford, Stratton, Sudbury, Sunderland, Sutton, Swanton, Thetford, Tinmouth, Troy, Underhill, Vergennes, Vernon, Walden, Wallingford, Waltham, Wardsboro, Warner's Grant, Warren's Gore, Waterbury, Waterville, Weathersfield, Wells, West Haven, West Rutland, West Windsor, Westfield, Westford, Westminster, Westmore, Weston, Weybridge, Wheelock, Whiting, Williston, Windham, Windsor, Winhall, Winooski, Wolcott, Woodbury, Woodford, Woodstock, and Worcester, and the operation of cable systems in said Cities and Towns, will promote the general good of the State of Vermont subject to compliance with the following conditions.

General Terms

1. For the duration of this Certificate, Holdco shall employ a Regulatory Affairs Manager separate from the Regional Manager position whose responsibility shall include oversight of Holdco's compliance with Vermont statutes, rules, orders and other regulations governing cable operators.
2. If Holdco enters or has entered into an agreement to lease, sell, or otherwise provide or share facilities or services in Vermont to, or with, any of its affiliates, the agreement shall be reduced to writing, including the date, and shall be made available to the Department of Public Service ("Department") and the Board upon request.
3. Holdco shall file tariffs and all individual customer agreements for its cable services with the Board to the extent required by Vermont law.

4. For the purpose of calculating the gross revenue tax under 30 V.S.A. § 22, Holdco shall use the following definition of gross revenues: all cash, credit, property of any kind or nature, or other consideration received directly or indirectly by Holdco derived from the operation of its cable systems in Vermont including, but not limited to, monthly fees charged to subscribers for basic service; monthly fees charged to subscribers for any optional service; pay television fees; pay-per-view fees, premium-service fees, monthly fees charged to subscribers for any tier of service other than basic service; installation, disconnection and reconnection fees; late fees charged to subscribers; leased-channel fees; fees, payments or other consideration received from programmers; fees, payments or other consideration received from third parties for lease of space on either fiber or coaxial cable; converter rentals or sales; studio rental, production equipment and personnel fees; advertising revenues; and revenues from home shopping networks and revenues from Internet access service until such time that a gross revenue tax is paid on such revenues as telecommunications services.

5. For purposes of calculating funding for Public, Educational, and Governmental ("PEG") access in the absence of an agreement otherwise, Holdco shall use the definition of gross revenues in the preceding paragraph except that Internet-access service revenues shall be excluded from the calculation unless and until Congress, the Federal Communications Commission, or a court of competent jurisdiction or governmental agency of competent jurisdiction issues a final ruling or order, not subject to appeal, that such revenues shall be included in such a calculation of gross cable-service revenues.

6. Holdco shall not itemize on subscriber bills the Vermont gross revenue tax, imposed on Holdco pursuant to 30 V.S.A. § 22, unless Vermont law allows such itemization.

7. Holdco shall fund a statewide cable advisory board which shall be self governing and independent of Holdco to provide public input on community needs and to serve as a vehicle for two-way communication with the Company. At least annually, Holdco shall request to meet with the statewide advisory board.

8. On at least a bi-annual basis, Holdco's senior Vermont management shall invite city and town government officials in each of the former Adelpia cable systems to meet for the purpose of exchanging information about community needs and the Company's plans. These meetings

shall be conducted on a system-wide basis and the PEG Access Management Organization ("AMO") or AMOs serving that system shall also be invited to these meetings. For smaller systems, such meetings may be held under the auspices of a regional planning commission or other appropriate regional entity. The Company shall submit summaries of these meetings, including the recommendations made by participants and the Company's response, to participants, the Board and the Department.

9. Holdco shall at all times provide a reasonable quality of service, having regard to Federal Communications Commission minimum service standards, available technology, subscriber interest and costs. Holdco shall at all times offer a reasonably broad range of programming, having regard to available technology, subscriber interest, the revenues and potential revenues of the systems, and costs. The Board shall, to the extent permitted by law, retain jurisdiction to prescribe broad categories of programming.

10. Prices for services not subject to rate regulation shall at all times be reasonable, having regard to the costs of providing such services.

11. If Holdco does business in the State of Vermont under any other name other than the name in use on the date of the Order in this Docket, it shall file a notice of the new tradename, along with a copy of its Vermont Secretary of State's Tradename Certificate, with the Clerk of the Public Service Board and the Department thirty (30) days prior to doing so.³ At the time of filing its Annual Report pursuant to 30 V.S.A. § 22, Holdco shall also file with the Board the following:

- (1) a copy of Holdco's PEG Access Report under PSB Rule 8.419 (formerly referred to as a PEG Access Plan) and a description of its access facilities and services and the use thereof during the preceding calendar year or annual period;
- (2) subject to Paragraph 42 of this Certificate, a report of all written consumer complaints and notations regarding oral and telephone complaints received during the preceding calendar year or annual period;
- (3) a map sufficiently outlining the service territory and describing its existing plant and any extensions and replacements planned for

3. For a corporate name change, *see* 11 V.S.A. § 4.01 and 30 V.S.A. § 231. Petitioner may wish to contact the Clerk of the Board for assistance.

commencement or completion within one calendar year from the close of the preceding calendar year or annual period, and a separate map identifying the fiber runs and node locations supporting the current service areas, which shall be maintained as confidential and proprietary;

(4) a listing of services, the rates charged for each service as of the date of the filing of the report, a statement of any changes in any such rates from the preceding calendar year or period and a statement of the revenue derived from each service during such calendar year or annual period;

(5) a statement of significant changes to be implemented during the current calendar year or annual period in Holdco's business structure, operating procedures and services to be offered;

(6) a balance sheet, an income statement, a statement of changes in financial condition and a statement of assets used and useful for the provision of service in Vermont, all as of the close of the preceding calendar year or annual period;

(7) a current copy of the complete corporate System of Accounts applied to operations in Vermont, if different from that previously filed;

(8) house-count surveys of all unserved areas of the franchised territory, both at the ends-of-lines and unserved interior areas, and a construction budget providing for construction of all areas identified as meeting Holdco's tariffed criteria for line extensions without a contribution-in-aid-of-construction; and

(9) the annual calculation of the Minimum Qualifying Density ("H") for the purpose of Holdco's line-extension policy in accordance with the formula set forth in the Order in Docket 6101.

12. Holdco shall at all times comply with Vermont law and all applicable regulations, as they may be amended from time to time.

13. Holdco shall comply with all regulations of the Federal Communications Commission, including the regulations governing commercial leased access. Compliance with the commercial leased-access rules requires Holdco to provide non-discriminatory access to its facilities to all video programmers qualified by the leased-access regulations to such access.

14. This Certificate shall expire eleven years from the date of this Certificate.

15. This Certificate shall be subject to revocation upon good cause, including a substantial or continuous failure to abide by its material terms.

16. This Certificate may not be transferred without the consent of the Public Service Board.

PEG Access

17. Holdco shall designate one or more AMOs as provided in Rule 8.400. Holdco shall provide levels and types of financial, operational, and technical support to those AMOs that are fair and reasonable. This condition shall not preclude Holdco from designating the same or additional AMOs than has a competitive operator in any area, nor preclude Holdco from offering different or additional public access content to its cable subscribers.

18. Holdco shall file with the Board and Department copies of all PEG-access contracts with AMOs, and any amendments thereto, within 30 days of execution.

19. Holdco must work with the relevant AMO prior to any PEG-access-channel reassignment and shall pay the access entity's reasonable costs of such reassignment. Holdco shall not reassign a PEG access channel without advance warning and consultation with the AMO.

20. Holdco must provide a statewide PEG access channel, and this commitment may be met through the provision of interconnection bandwidth rather than as a viewable channel. At a minimum, this Network shall enable digital file sharing between AMOs and the ability for AMOs to distribute programs to Holdco subscribers in its Vermont territories. Details of this provision should be determined through negotiation or a later proceeding. Negotiations should be open to all PEG AMOs wishing to take part. Holdco shall provide the statewide network once the details for operation of the network have been decided. Holdco shall offer to interconnect, directly or indirectly, with the Vermont cable systems operated pursuant to Certificates of Public Good to exchange PEG-access programming among the companies' systems. Said interconnection shall be subject to the parties reaching acceptable commercial terms concerning ownership and apportioning the cost of any facilities necessary to interconnect Holdco's and other cable companies' networks. If the cable operators cannot reach an interconnection agreement within 120 days, Holdco shall submit all unresolved issues to the Board for resolution.

21. If the Board has designated an entity to act as a statewide PEG AMO, Holdco shall upon request of the AMO provide as minimum support for the statewide PEG network the capability of transmitting signals from the statewide network to any PEG forward channel and transmitting to the statewide network signals originating on any PEG reverse channel on the cable system.

Such a request by the AMO for statewide PEG-network capability is to be made at least one year prior to activation of the statewide channel on a Holdco system. Additionally, Holdco is not obligated to pay for statewide PEG-programming content in addition to its PEG-access obligations.

22. Holdco shall provide fiber-optic or coaxial-cable drops, capable of two-way service and remote origination service, upon request, to every school, library, and PEG-access studio, and to at least one municipal building in every municipality in which it is obligated to provide cable service, upon request of the school, library, PEG entity or municipality. Holdco may provide the two-way service through a drop that is separate from any drop used to provide cable-television service or high-speed Internet access service to that entity. Holdco shall provide and activate each requested drop within 6 months of receiving a request from the respective school, library, AMO, or municipality, provided, however, that Holdco is able to obtain all necessary approvals and permits pursuant to Rule 3.700. This condition does not require Holdco to provide drops to buildings that are neither passed by nor located within 500 feet of cable plant unless an entity is willing to reimburse Holdco for the incremental cost of the non-standard installation. Holdco shall provide basic cable service at each coaxial drop and shall provide standard installation at no charge. Upon request, Holdco shall provide an entity described in this paragraph with a non-standard installation, provided the entity pays the difference in cost between the standard and non-standard installation.

23. At a minimum, Holdco must provide the following PEG access outreach:

- (1) fund semi-annual, quarter-page advertising in local newspapers promoting PEG access programming and functions and assist AMOs in placing their channel programming in a local newspaper's television listing grid where such a listing is feasible;
- (2) provide on-screen advertising and promotion of the PEG access channel programming and facilities; provide at least 1 gigabyte GB of space on the Company's [cable-modem-service] server for each PEG access channel for purposes including, but not limited to, posting program listings, information about scheduling the use of the studio production facilities, post-production editing facilities, training, and scheduling time slots for airing programs on the public access channels; and links to local PEG access web sites related to programs on the channel; and

- (3) allow PEG access groups to access Holdco's electronic programming guide and pay the fee so that the groups can have their schedules listed on that channel.

Holdco shall respond to reasonable requests by AMOs to communicate with Holdco's subscribers. Any direct costs incurred by the Company due to such communications that are over and above those normally incurred by the Company shall be borne by the requesting AMO.

24. Holdco and each AMO shall reevaluate the digital equipment needs or other PEG access related cable system improvements at least twice during the term of this Certificate. Holdco shall provide additional capital funding for each such re-evaluation or upgrade based upon the criteria of Rule 8.405. If an agreement cannot be reached, the Board will exercise its authority under 30 V.S.A. § 509(a) or Rule 8.405(e) and open an investigation to consider the necessity and amount of the interim upgrade payments.

25. Holdco shall provide AMOs the ability to originate as many simultaneous live PEG programs on any part of its system as there are forward PEG channels on that part of the system. Holdco shall not be obligated to originate any quantity of simultaneous, system-wide broadcasts that exceeds the number of forward PEG channels activated in that part of the system with the smallest quantity of activated forward PEG channels.

26. Holdco shall create and maintain a plan for reasonable public access in accordance with Rule 8.401 and Rule 8.419. The Company shall keep a current PEG Access Report on file with the Board.

27. Board Rule 8.400 shall apply to Holdco, to any AMO with which Holdco may designate and contract, and to any organizations that seek Holdco's designation as an AMO. Holdco shall comply with Rule 8.400 as may be amended from time to time. Total operating funding within each system served by one or more AMOs shall not exceed 5% of the Company's annual gross revenues earned in that system. Unpaid balances owed by the Company shall earn interest at the legal rate (see 9 V.S.A. § 41a), commencing the day after the due date. Unless otherwise negotiated, Holdco will further assume Adelphia's existing PEG access agreements. Holdco shall file with the Board and Department copies of all PEG-access contracts with AMOs, and any amendments thereto, within 30 days of execution.

28. Holdco shall maintain PEG Policies and Procedures that ensure adequate and prompt resolution of technical and administrative matters that arise between Holdco and the AMO. Until and unless revised by Holdco in collaboration with its designated AMOs, Holdco will adopt Adelphia's PEG Policies and Procedures which include:

- (1) identification of the types of matters that have arisen in the past between the AMOs and Adelphia and which are likely to arise in the future, and the urgency demanded by the respective matters;
- (2) designation of an appropriate system-level or state-level Company liaison for each type of matter, on a system-by-system basis when necessary;
- (3) delineation of the responsibilities and authority of the designated Company liaison, including how that individual will be trained to handle the individual's role and time frames for response;
- (4) a mechanism for escalation of matters which have not been satisfactorily resolved by the liaison; and
- (5) a periodic review process for the AMOs and Holdco to jointly review the effectiveness of the procedures at least semi-annually.

29. At least annually, a Holdco representative shall meet with each AMO's governing board. The Holdco representative must have sufficient authority to be able to make binding promises on behalf of the Company.

30. At least annually, Holdco shall request to meet with the statewide advisory board constituted under Paragraph 7. Holdco shall, on an annual basis, inform every municipality, school, library and AMO in every system subject to this Certificate of the opportunity to have two-way capable drops placed at the locations described in Paragraph 20 and offer to meet to:

- (1) determine each entity's need for two-way capable drops;
- (2) in the case of municipalities, discuss the location(s) of such drop feed points within each municipality; and
- (3) negotiate the specific arrangements necessary for installation and maintenance of such drops.

If requested by the qualifying entity, at least one two-way capable drop shall be installed at that entity's premises as soon as practicable, but not more than 6 months after receiving a request from the respective school, library, AMO or municipality, provided, however, that Holdco is able to obtain all necessary approvals and permits pursuant to Rule 3.700. Holdco's obligation to install a two-way capable drop in response to a request from an eligible entity shall be ongoing. Holdco shall submit with its Annual Report to the Board and the Department a status report of the installation

of two-way capable drops, including the status of negotiations with the municipalities, schools, libraries and AMOs with respect to such installation.

31. Upon request of an AMO, Holdco shall provide the AMO an in-house ability to control upstream signals from each remote origination site within the AMO's service territory.

32. Holdco shall provide 1 GigaByte of internet storage space to each designated AMO.

Line Extensions

33. Line extensions shall be built without customer contribution in accordance with Holdco's annual calculation of the Qualifying Density ("H"), which determines the average density of equivalent year-round residential and business units passed per mile, starting at the nearest end of the existing trunk or distribution system, for the next calendar year.

34. For the purposes of determining whether a line extension should be built without a customer contribution:

- (1) Holdco shall count a dwelling as a year-round residential unit if the subscriber is paying for year-round service, regardless of the period of actual occupancy;
- (2) Holdco shall count a subscriber as verified if the subscriber has entered into a two-year contract for year-round service;
- (3) Holdco shall count seasonal dwellings as one-third of a year-round residential unit unless there is credible evidence that a higher or lower percentage should be used;
- (4) Holdco shall count seasonal subscribers that enter into two-year contracts on a pro-rata basis;
- (5) when counting residential units for the purpose of implementing its line-extension policy, Holdco shall count all dwellings within 500 feet of the proposed extension (customers may be charged for the costs of providing a service connection that exceeds the cost of a standard 300-foot drop);
- (6) when counting businesses for the purpose of implementing its line-extension policy, Holdco shall count each business if any part of the structure or structures that comprise the business is within 500 feet of the proposed extension (customers may be charged for the costs of providing a service connection that exceeds the cost of a standard 300-foot drop);
- (7) when counting business units for the purpose of implementing its line-extension policy, Holdco shall count each establishment as one-ninth in

order to account for what would typically be expected to purchase cable service as one year-round unit;

(8) Holdco shall count multiple-unit business establishments such as hospitals, homes for the elderly and nursing homes, as a subscriber per unit if the occupants of the units can subscribe as individuals; the pro-rata scheme described in the April 28, 2000, Order of the Board in Docket 6101 should be employed if the subscribers are seasonal;

(9) in multiple-unit business establishments such as hospitals, homes for the elderly, nursing homes, hotels, motels and other lodging establishments where the occupants of the units cannot subscribe as individuals but where there is cable service to a number of the units, Holdco shall count the units in a manner similar to seasonal residential dwellings, with the ratio of units to equivalent year-round dwellings equal to the ratio of the unit rate to the basic service rate, plus one year-round subscriber for the business as a whole;

(10) in counting residential units and businesses for the purpose of implementing its line-extension policy, Holdco shall not count that part of the house drop (the facilities located between the dwelling and Holdco's distribution facilities generally located in the road right-of-way) constructed with coaxial cable as part of the line extension;

(11) homes with satellite service/dishes should be counted as 1/3 unless modified by the Board in accordance with this Condition (the workpapers filed with the results of the annual house-count survey shall be made to make the effect of the discount for satellite dishes identifiable); and

(12) Holdco shall respond in writing within ten days to any information request from the Department or the Board concerning the status of line-extension plans or construction progress.

Holdco shall maintain and file annually a calculation of the cable service penetration rate for newly-built service areas where houses with satellite dishes have been counted as one-third of a house. Holdco or the Department may propose to adjust, and the Board, without amendment of this Certificate, may adjust or accept a proposal to adjust the equivalence factor applicable to homes with satellite dishes if the factor in the preceding Condition does not reflect Holdco's actual service penetration rate for recent line extensions.

35. Holdco shall perform and report annual unserved area house count surveys and shall prepare a schedule of street and road locations determined by the house count surveys to qualify for construction without contribution-in-aid-of-construction. The survey and schedule shall be filed as a component of, and concurrent with, Holdco's Annual Report to the Department.

36. Holdco shall provide quarterly reports to the Department on each line extension, providing the location of the extension, its length, the date the extension was determined as qualifying via a house count survey, the date pole applications for the extension were filed with the pole-owning utilities, the proposed and actual date for the engineering rideout, the date the make-ready report was received from the pole-owning utilities, the estimated and actual cost of the make-ready work, the estimated and actual date for completion of the make-ready work, the proposed and actual date construction of the extension commenced and the date the extension was completed.

37. All house count surveys to be filed with the Department shall be performed in accordance with the electronic house count procedures as set forth by Adelphia in collaboration with the Department in July and November 2004.

38. Holdco shall annually calculate Minimum Qualifying Density for the purpose of the Company's line-extension policy and shall report that calculation in its Annual Report to the Department. The calculation shall be performed using homes-passed, penetration, and revenue data from the Annual Report to the Department, as provided in the Docket 6101 Order. The calculation shall be performed using Holdco's average construction cost per mile for qualifying line extensions during the prior year as the assumed construction cost per mile. Holdco may use current data for all other parameters in the formula, including the carrying charge factor. To the extent possible, all elements of the formula should be based on the same time period. If audited financial statements are not available, Holdco shall use unaudited numbers. The recalculation of the Minimum Qualifying Density shall be subject to review by the Board.

39. Holdco must construct all line extensions ordered by the Board in Docket 6445 that remain to be constructed ("Remaining Docket 6445 Line Extensions") in accordance with the following conditions:

- (a) The Remaining Docket 6445 Line Extensions, which total approximately 1,262 miles, shall be those identified in the document titled "Adelphia 4th Quarter 2002 'Quarterly Report'" and attached tables, and shall not be subject to further revision or disqualification, including by refinement of strand maps, update of house counts, or revised construction cost estimates.
- (b) Holdco will construct and activate the Remaining Docket 6445 Line Extensions by the following dates:

Milestone Date	Milestone (Cumulative Miles Activated)	Penalty per mile short
By 12/31/06	700	\$27,000
By 12/31/07	1000	\$28,000
By 12/31/08	Total Remaining Docket 6445 Line Extensions	\$29,000

If the cumulative total miles to be constructed and activated by a specific Milestone are not met by the specified date, Holdco shall be subject to a penalty effective the January 1st immediately following the applicable Milestone Date and as specified in Paragraph 39 below. The penalty amount shall equal the product of the applicable "Penalty per mile short," as set forth above, and the Milestone for the applicable year less the number of Remaining Docket 6445 Line Extensions constructed and activated as of the applicable Milestone date.

(c) The Milestone and the penalty, if any, that is otherwise applicable at the end of a particular calendar year will be waived in the event, and only to the extent, that Holdco does not reach the Milestone by the Milestone Date due to events beyond its control such as Force Majeure events as described in this subparagraph. Holdco shall diligently perform its obligations under this Agreement, but conditions may arise that prevent or delay its performance because of causes beyond Holdco's reasonable control including, without limiting the generality of the foregoing, flood, earthquake, hurricane, ice storm, blizzard, fire, explosion, war, riot, civil disturbance, labor disturbance, strike, sabotage and restraint by court that, by exercise of due diligence and foresight, Holdco could not have been expected to avoid. If Holdco is rendered unable to fulfill any obligations by reason of such causes, it shall be excused from performing for the time and to the extent it is prevented or delayed from so doing, but shall exercise due diligence to correct such inability with all reasonable dispatch. Force Majeure events do not include circumstances such as incomplete make-ready work, unavailability of equipment or commercial impracticability; except they shall include incomplete make-ready work, when Holdco has followed the requirements of PSB Rule 3.700 and the owner(s) of the poles have failed to complete make-ready as required by that rule and by tariffs and Holdco has timely taken all steps available to it under Rule 3.700 to compel the pole owner(s) to complete make-ready.

(d) If Holdco experiences an event that it contends qualifies under this subparagraph and that it contends impacts its ability to meet its obligations for an upcoming Milestone Date, it shall within ten (10) business days of the event, or of the date on which Holdco knew or reasonably should have known of the event, notify the Department and Board in writing of the occurrence and nature of the event and its intent to invoke the protections of this

subparagraph. Failure to provide timely notice shall be deemed a waiver of any protections otherwise available under this paragraph for the event in question. Thereafter, Holdco shall file written reports with the Board and Department every thirty (30) days detailing the effects of the event, the extent of the event's impact on Holdco's ability meet its obligations for the approaching Milestone Date, why the event is having such an effect and an estimate of how long it will take Holdco to correct the inability to perform that resulted from the event. Once the effects of the event are overcome and any mileage shortfall corrected, Holdco shall within ten (10) business days so report in writing to the Board and the Department and additional reports relating to the claimed event will no longer be required.

(e) Holdco may, at any time subsequent to an initial notification that it is invoking Force Majeure under this subparagraph and prior to the next Milestone Date, petition the Board for a ruling on the appropriateness of the claim and extent of the Force Majeure waiver. In the event the claim of Force Majeure applies to more than one Milestone Date, Holdco may file a subsequent petition as necessary prior to each such affected Milestone Date. The Department shall work with Holdco to resolve questions arising under this subparagraph prior to the filing of any such petition by Holdco. If the Department and Holdco resolve all issues under a claim of waiver of Milestone under this paragraph, they shall jointly report to the Board, the report will be deemed a stipulated petition and the waiver of Milestone shall be deemed approved by the Board absent notice of investigation or hearing issued by the Board within thirty (30) days of the filing of any such report. In the event the Department and Holdco are unable to resolve questions arising under this subparagraph prior to the filing of any such petition by Holdco, then for those unresolved questions Holdco shall bear the burden of demonstrating the appropriateness of the requested Milestone waiver and extent of the Milestone waiver claimed. No claimed waiver of any Milestone shall be effective until approved by the Board. However, the due date for payment of any penalties based on mileage subject to the claimed waiver shall be tolled until Holdco's petition is resolved by the Board.

(f) Milestones for years 2006, 2007, and 2008 are not subject to waiver on the basis of either dollars expended to construct the Remaining Docket 6445 Line Extensions.

40. If Holdco fails to meet the Milestone as prescribed in Subparagraph 38(b) above, and as reported to the Board and the Department as prescribed in Subparagraph 41(c) below, the penalty as described in Subparagraph 38(b) above shall become due and payable to the State of Vermont and tendered to the Board no later than thirty (30) days following the applicable Milestone Date, subject only to Holdco's claim of waiver asserted by Holdco in compliance with the terms and

conditions of Subparagraph 38(c). Additional penalties may become due and payable in accordance with Paragraph 38 above following investigation and hearing as provided in Subparagraph 41(c).

41. Holdco shall build Additional Line Extensions, following completion of the Remaining Docket 6445 Line Extensions, as follows:

(a) The quantity of Additional Line Extensions shall be determined by the pace at which Holdco constructs the Remaining Docket 6445 Line Extensions. Holdco will incur an additional and cumulative obligation to construct Additional Line Extensions in each year that the Remaining Docket 6445 Line Extensions remain incomplete.⁴ The quantity (in strand miles) of Additional Line Extensions shall accrue according to the following schedule until all Remaining Docket 6445 Line Extensions are constructed and activated:

Date	Incremental Add'tl Line Extensions	Cumulative Add'tl Line Extensions
On or before 12/31/06	150 miles	150
1/1 12/31/07	75	225
1/1 12/31/08	75	300
1/1 12/31 of each subsequent year	100	Prev. Yr. Cum. Total + 100

(b) Holdco shall place all Additional Line Extensions, as determined above, in service by December 31, 2009. At its discretion, Holdco may commence construction of Additional Line Extensions sooner than calendar-year 2009. However, should Holdco commence construction of any Additional Line Extensions sooner than calendar-year 2009, whether or not any such line extension miles qualify as Cumulative Additional Line Extensions will not be determined until Holdco conducts its annual house count survey next following its completion of the Remaining Docket 6445 Line Extensions.

(c) Holdco will be deemed to have fulfilled its obligation to construct Additional Line Extensions when the cumulative length of constructed and activated Additional Line Extensions equals or exceeds the amount of Cumulative Additional Line Extensions determined in accordance with Subparagraph 40(a), above.

(d) Whether or not any line extension miles constructed qualify as Cumulative Additional Line Extensions will be determined as follows:

4. "Incomplete" means cable service is not available along the cable route.

Upon construction and activation of all Remaining Docket 6445 Line Extensions, Holdco shall take the total miles of all non-Remaining Docket 6445 Line Extensions constructed and activated since December 15, 2003, and shall subtract from that total:

- (i) All miles of line extensions constructed and activated with customer contributions-in-aid-of construction;
- (ii) All miles of line extensions constructed and activated that were identified and constructed as the result of Holdco's Qualifying Density requirements under this Certificate in any given year; and,
- (iii) All miles of line extensions constructed and activated that would have qualified for construction without customer contribution based on the Qualifying Density applicable for the annual house count survey next following Holdco's completion of the Remaining Docket 6445 Line Extensions.

Any miles of extensions constructed and activated that remain after the above calculation shall be credited against the amount of Cumulative Additional Line Extensions owed by Holdco. The balance of the Cumulative Additional Line Extensions owed by Holdco shall be constructed and activated as soon as possible thereafter but in no event later than December 31, 2009.

(e) Holdco may exercise its judgment in selecting the geographic areas into which it constructs Additional Line Extensions, but shall make reasonable efforts to construct Additional Line Extensions in unserved areas having a high density of homes-passed-per-mile at the time potential line extensions are surveyed.

(f) The duty to demonstrate that Holdco has fulfilled its obligation to construct Additional Line Extensions shall be upon Holdco. When Holdco seeks to demonstrate that it has fulfilled this obligation, it shall, concurrent with the filing of its annual house count survey next following its completion of the Remaining Docket 6445 Line Extensions, identify and categorize all non-Remaining Docket 6445 Line Extensions constructed and activated by it or Adelphia subsequent to December 15, 2003, consistent with the categories described in Subparagraph 38(d) above in a manner that allows verification that the obligation has been met.

(g) The Additional Line Extension miles shall be convertible, at the Board's discretion, into monetary penalties at a rate of \$30,000 per mile if Holdco fails to complete the Additional Line Extensions by December 31, 2009.

42. Holdco shall provide a bond or equivalent security, as provided below, to guarantee payment of any penalties that may become due pursuant to this Stipulation:

(a) Holdco shall provide a bond or equivalent form of security, payable to the Public Service Board, in the amount of \$5,000,000. Each year, effective on December 15, said bond or equivalent security shall be adjusted as provided below; however, in no event shall the amount of the bond or equivalent security posted ever be less than the amount calculated as the product of the cumulative Remaining Docket 6445 Line Extensions (including any miles due and unbuilt from prior calendar years) to be built in a particular calendar year times the penalty per mile short for that year as specified in Subparagraph 38(b):

Date	Bond or Equivalent Security Amount
12/15/05	\$8,100,000
12/15/06	\$8,400,000
12/15/07	\$8,700,000
12/15/08	\$9,000,000

Holdco shall provide to the Board a copy of the annual bond or equivalent security with a copy to the Department.

If in any year Holdco exceeds the cumulative miles due for that year's Milestone, Holdco shall be permitted to seek the Board's approval to reduce the bond or equivalent security posted for the following year to account for the impact of Holdco having exceeding its Milestone requirement.

(b) Holdco acknowledges that the aggregate amount of penalties to which it may be subject are not limited to the aggregate amount of the bonds or equivalent securities. The penalties shall be calculated in accordance with Paragraphs 38 40 above.

(c) By December 15th of each year, Holdco shall provide to the Board and Department a statement of the number of Remaining Docket 6445 Line Extensions that were constructed and activated as of that date. Any adjustments to the bond described in Subparagraph 41(a) above shall be based on the December 15th statement. In the event Holdco constructs and activates additional miles between December 15th and the following Milestone Date, Holdco may file a supplemental statement within ten (10) business days of the applicable Milestone Date. The accuracy of such statement(s) shall be supported by a sworn, signed, and notarized affidavit from a Holdco officer within the New England region or successor and, upon notice, may be subject to investigation and hearing by the Board. Notice of the intent to seek any such investigation shall be provided to Holdco within sixty (60) days of the filing of the affidavit with the Department and the Board.

(d) Holdco may, at any time subsequent to January 1, 2010, or such earlier time as Holdco fulfills the obligations of Paragraphs 38 and 40 herein,

petition the Board for discharge of the bond or equivalent security required by this paragraph. Upon notice and opportunity for hearing, the Board will authorize Holdco to dissolve the bond immediately if the requirements of Paragraphs 38-40 herein have been met.

(e) In the event that Holdco fails by twenty (20) or more miles to meet an annual cumulative Milestone in any year, then the Department in its discretion may require Holdco to provide to the Board a bond or equivalent security payable to the Board for the total amount of all bond or equivalent security amounts specified for all remaining years, as set forth in Subparagraph 41(a) above. Upon notice from the Department to Holdco of this requirement, Holdco shall provide the bond or equivalent security to the Board within thirty (30) days.

43. Holdco shall file quarterly reports with the Board and Department, beginning on March 31, 2006, or upon the completion of the first calendar quarter for which Holdco is authorized to provide service, and continuing until all Remaining Docket 6445 Line Extensions and Additional Line Extensions are constructed and activated, containing the following information:

- (1) Identification of the extensions to be constructed to meet that year's Milestone;
- (2) Anticipated completion date for the Milestone;
- (3) Current progress achieved towards the Milestone;
- (4) Status of make-ready work affecting the identified extensions;
- (5) Status of pole applications affecting the identified extensions;
- (6) Status of pole applications affecting the subsequent year's Milestone;
- (7) Status of make-ready work affecting the subsequent year's Milestone; and
- (8) Any line extensions intended to meet the Additional Line Extension requirements.

Holdco shall use the format of the quarterly reports previously used by Adelpia. The reports required by this paragraph are in addition to and do not alter Holdco's obligations to provide house count surveys and any other reports as required by the Board's Order in Docket 6445 or any other Board Order, Board Rule, this Certificate, or Vermont law.

Customer Service and Subscriber Notices

44. Holdco shall adhere to the customer service standards contained in 47 C.F.R. § 76.309.⁵ The Company must monitor its customer service performance in relation to all FCC and Board customer service standards on a monthly basis. Holdco will maintain a service quality plan, developed in collaboration with the Department of Public Service, to ensure effective monitoring and adherence to state and federal standards. Quarterly, the Company must submit these data to the Department and the Board. Where quarterly performance falls more than 10 percent below any standard, or where performance does not meet any standard for two consecutive quarters, the Company must submit a corrective action plan within 30 days of the end of the reporting quarter indicating how it will regain the failed standards.

45. Should consumer complaints to the Department concerning Holdco exceed a rate of 2.5 escalations per 1000 customers, Holdco must track and analyze consumer complaints in a manner that will enable their periodic analysis. ("Escalation" is a complaint to the Consumer Affairs and Public Information Division of the Department ("CAPI") in which, following investigation, CAPI staff determines reasonably there is something the Company could and should have done differently prior to the consumer having to contact the Department for assistance.) Specifically, the Company must work with the Department to develop a complaint-tracking protocol that defines what is considered a complaint to the Company and complaint categories to be tracked. The system should permit customer-service and sales representatives to capture written, telephonic, e-mail, and face-to-face complaints and to allow easy tabulation and analysis of those complaints by system and topic. If this provision is triggered, on an annual basis, the Company must submit a report to the Department and the Board indicating the number and nature of complaints received, how they were analyzed by the Company, what systemic issues were identified, and what responses were implemented to address those systemic issues. Measurement of the consumer-complaint rate to determine whether this provision is triggered shall be calculated on a calendar year basis. If this provision

5. All references to sections of 47 C.F.R. are intended to refer to those sections as they shall be amended from time to time.

is triggered, the requirements of this provision will continue for a period of the subsequent three years.

46. Holdco must respond to written inquiries from the Department regarding consumer complaints within 14 days commencing upon receipt by Holdco of the Department's written notification of a complaint. Written notification includes notification by electronic mail, facsimile, hand-delivery or U.S. mail. In any case in which the Company is unable to respond fully within seven days, by providing all information necessary to resolve the complaint, it must provide notice to the Department before the elapse of the initial 14 days that an extension of time is required. In no case may the total response time, including the initial 14 days and any extension, exceed 28 days. Although the initial transmittal of the complaint must be in writing, the Department and the Company are permitted to discuss the complaints in person or by telephone. In instances of an urgent matter as determined by the Department, such as imminent loss of service, Holdco shall provide, to the extent possible, expedited responses to the Department.

47. Holdco shall annually cause to be mailed to each of its subscribers a notice, in the form previously approved by the Board for Adelphia, that: (1) states that the Board and the Department desire to hear the views of subscribers regarding the quality of services provided by the Company and as to the reasonableness of the terms upon which such services are provided; (2) informs the subscribers how they may communicate their views to the Board, to the Department and to the Company; and (3) provides the notices required by Board Rule 8.431 and 47 C.F.R. § 76.1602(b)-(c).

48. On or before January 30 of each year, Holdco shall certify to the Board, under oath, that it has distributed the notice during the previous calendar year.

49. Holdco shall annually notify all subscribers of the complaint and appeal procedure for complaints against any PEG access entity and complaints against the Company itself.

50. If Holdco decides to raise rates more than once in any calendar year, Holdco shall include with its rate-change notice to the Board, and provide a copy to the Department of, a written explanation of the circumstances or other reasons that necessitate Holdco's need to increase its rates.

51. Holdco shall provide outage credit and/or refunds to customers without the necessity of the customer contacting Holdco in those instances in which Holdco knows an outage has occurred and has affected a particular system or portion of a system. Holdco's outage-credit policies and practices shall at all times be consistent with Board Rule 8.343.

52. Holdco shall treat all written complaints from subscribers in accordance with 47 C.F.R. § 76.1619(b) and Board Rule 8.345. Holdco shall not limit such responses to those complaints that cannot be resolved by a customer-service representative.

53. Holdco shall ensure that all customer notices are in plain English, at no greater than a sixth-grade reading level, and that type sizes and layouts are sufficient to render the notices readable to the average consumer. The Flesch-Kincaid Reading Level test, or equivalent instrument that may widely supersede it, shall be used to determine compliance with the grade-level requirement.

54. Holdco shall provide customers at the time of any service order with a clear and understandable description of the terms, conditions, rates, and charges for all requested services and appropriate alternatives, which shall include the least-cost alternatives to the requested service. The Company shall disclose, at a minimum, any non-recurring charges, such as for installation, the recurring charges for services, any charges that apply to a change in service or periods in which such charges are waived and information about equipment, policies and procedures.

55. Holdco shall list the toll-free telephone number of the Department of Public Service on its bills and in the "complaint procedures" section of its annual notices along with the following language: "You should first try to resolve any complaint or dispute directly with Holdco. If you remain unsatisfied by Holdco's response, you may request assistance from the Vermont Department of Public Service Consumer Hotline by calling 1-800-622-4496."

56. Holdco shall ensure that its "complaint procedure" and any other relevant sections of the annual notice provided to consumers in compliance with 47 C.F.R. § 76.102(b) identifies the "Vermont Public Service Board" as the local franchising authority for all Vermont systems. At no time shall Holdco represent to customers, either in writing or orally, that the municipalities are the local-franchising authorities in Vermont.

57. Holdco shall at all times ensure that its annual customer notice is specific and detailed with respect to Vermont policies and procedures and that all contents are consistent with the Company's Vermont tariff.

58. Holdco shall provide all customers at the time of installation with a clear, written notice complying with 47 C.F.R. § 76.1618 that the basic tier of service is available, its cost per month and a list of all services included in the basic tier.

59. Holdco shall ensure compliance with 47 C.F.R. § 76.309(c)(3), which requires that refund checks due to customers shall be issued no later than (a) the earlier of the next billing cycle following resolution of the request or 30 days, or (b) the return of equipment supplied by the operator if service is terminated.

Institutional Networks

60. Holdco, or its duly designated agent, shall develop and submit a proposal within the time provided in a request for proposal ("RFP"), or if no time is specified then within 90 days, in response to any qualified RFP issued by a state or local government agency, educational institution (accredited elementary schools, secondary schools, colleges and universities and libraries open to the general public) or educational or governmental access entity ("institutions") seeking an institutional network for voice, video or data within its franchised area. An RFP should permit a minimum of 90 days for response and shall be deemed qualified if it contains the following information: the specific locations to be linked (which may include interconnection points with other cable systems or telecommunications providers to be determined later); the desired transmission capacity or amount of dark optical fiber; and a description of the desired applications to be operated over the institutional network. Holdco, or its duly authorized agent, shall not be required to construct dedicated facilities for institutional networks, where facilities shared with other services and networks meet the requirements of the institutions. Fulfillment of an RFP involving dark fiber shall not require interconnection of that dark fiber with Holdco's hybrid fiber coaxial grid or with any of the Company's headends, nor shall the institution or the users have access to or rights in those headends. It is understood that Holdco will, at most, lease dark fiber but not sell it. It is understood that Holdco may decline to fulfill an RFP requiring

dark fiber if the necessary labor and/or material is unavailable or is not available on customary and satisfactory terms.

61. Holdco's obligation with respect to Paragraph 57 will be waived in the event, and only to the extent, that Holdco can not comply due to events beyond its control such as Force Majeure events as described in this paragraph. Holdco shall diligently perform its obligations under this subparagraph, but conditions may arise that prevent or delay its performance because of causes beyond Holdco's reasonable control including, without limiting the generality of the foregoing, flood, earthquake, hurricane, ice storm, blizzard, fire, explosion, war, riot, civil disturbance, labor disturbance, strike, sabotage, and restraint by court that, by exercise of due diligence and foresight, Holdco could not have been expected to avoid. If Holdco is rendered unable to fulfill any obligations by reason of such causes, it shall be excused from performing for the time and to the extent it is prevented or delayed from so doing, but shall exercise due diligence to correct such inability with all reasonable dispatch.

62. Holdco's, or its duly designated agent's, response to a qualified RFP shall include the terms and conditions, including but not limited to rates, tolls or charges, under which it would make available the institutional network to the requesting entity. Charges for institutional networks shall not exceed Holdco's, or its duly authorized agent's, fully-allocated costs, including a rate of return of 11.25%, to provide the network.

63. Holdco, or its duly designated agent, shall not charge institutions for construction or extension of facilities used for institutional networks that are required to meet other obligations under its Certificate or provide services to other customers, either directly or through an affiliate. Holdco, or its duly authorized agent, may charge institutions a proportional share of line extensions not otherwise required that will be used for institutional networks but may also be used to serve cable customers.

64. If Holdco submits a proposal in response to an RFP for an institutional network in accordance with Paragraph 57 above, and said proposal is accepted by the requesting entity, then Holdco shall be obligated to provide service on the terms of the RFP or pursuant to the contract with the entity.

65. Holdco, or its duly designated agent, shall respond 24 hours a day, 7 days per week to outages or degradation of service below contracted service for institutional networks. If a reported problem with an institutional network cannot be corrected immediately, Holdco staff, or its duly designated agent's staff, shall promptly explain the status to the institution in person or via phone and provide the approximate time in which the problem will be resolved. A Holdco representative, or its duly designated agent, will verify with the institution that services are working either in person or via telephone before the trouble call is closed out. Holdco, or its duly authorized agent, shall provide institutions to which it provides institutional networks with a local manager to whom the institution can escalate unresolved problems.

Miscellaneous

66. Subject to applicable law, including statutes governing or rules and regulations promulgated by the Federal Communications Commission, Holdco shall respond to and negotiate with any digital-broadcast service broadcasting in Vermont, including but not limited to any service that provides High Definition TV or Standard Definition TV multicast services, commercially-reasonable terms for the carriage of such services on Holdco's system. This condition requires Holdco to use its best efforts to reach agreement on such terms but does not require that Holdco reach agreement for such carriage.

67. Holdco shall upgrade the Newport system to 750 MHz bandwidth or more within four years of closing the acquisition unless it can demonstrate that the system is otherwise capable of offering Video on Demand service equivalent in scope and features to the service it offers elsewhere in Vermont and unless it offers to Newport subscribers at least three-fourths of the maximum number of High Definition channels Holdco then offers elsewhere in Vermont. Holdco shall report to the Board and Department the completion date of any such upgrade, or shall report within four years of closing the acquisition and each two years thereafter that Video on Demand and High Definition programming are offered in Newport at the levels required for deferral of the system upgrade.

68. Holdco shall provide each AMO and each school, public library, and municipality within its service area with a cable modem and Internet access at no charge. The Internet service provided to an AMO's base production facility shall be commercial-class service.

69. Holdco shall provide the Board, the Department, affected municipalities, and affected AMOs with complete descriptions of all rebuilds and upgrades at least 90 days prior to the commencement of construction, and in all cases sufficiently in advance to allow time for meaningful comments and possible integration of those comments into the construction project.

70. Holdco shall continue to provide FM radio rebroadcast service in all systems in which it was provided by Adelphia prior to acquisition. Holdco shall not discontinue FM rebroadcast service except on 45 days notice to the Board and Department.

71. Holdco shall provide a channel with a reasonable amount of Vermont-related programming on its Vermont systems.

72. At least annually, Holdco must report to the Board and the Department on services that are being provided to customers of Holdco systems in the New England region but that are not available to Vermont customers. If some services are available to one-half or more of Holdco's non-Vermont customers in the New England region that are not offered in Vermont, the Department may petition the Board to require Holdco to either justify the disparity or make those services available here.

73. Holdco shall discuss major changes in the delivery of customer service and other aspects of operations, such as installation and repair and system architecture, with the Board and Department prior to finalizing plans and in sufficient time for meaningful input from regulators. Holdco shall inform the Board and Department in writing of major changes in the delivery of customer service and other aspects of operations at least 30 days prior to implementation.

74. This Certificate shall not take effect until or unless Holdco acquires the assets of the Vermont affiliates of Adelphia Communications Corporation, as described in the Final Order in this Docket, pursuant to 30 V.S.A. §§ 109 and 232.

Dated at Montpelier, Vermont, this 29th day of December, 2005.

<u>s/James Volz</u>)	
	)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>	)	BOARD
)	
	)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: December 29, 2005

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E mail address: Clerk@psb.state.vt.us)